COMPARISON OF THE PROVISIONS OF H.R. 2830, THE "PENSION PROTECTION ACT OF 2005," AS PASSED BY THE HOUSE OF REPRESENTATIVES ON DECEMBER 15, 2005, AND S. 1783, THE "PENSION SECURITY AND TRANSPARENCY ACT OF 2005" AS PASSED BY THE SENATE ON NOVEMBER 16, 2005

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JOINT COMMITTEE ON TAXATION

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INTRODUCTION

This document,[1] prepared by the staff of the Joint Committee on Taxation, presents, in side-by-side format, a comparison of the provisions of H.R. 2830, the "Pension Protection Act of 2005," as passed by the House of Representatives on December 15, 2005, and S. 1783, the "Pension Security and Transparency Act of 2005," as passed by the Senate on November 16, 2005.[2] This document includes a summary comparison of the provisions in the bills and does not reflect all the technical detail and differences in the provisions.

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[1] This document may be cited as follows: Joint Committee on Taxation, *Comparison of the Provisions of H.R. 2830, the "Pension Protection Act of 2005," as Passed by the House of Representatives on December 15, 2005, and S. 1783, the "Pension Security and Transparency Act of 2005," as Passed by the Senate on November 16, 2005* (JCX-xxx-06), March xx, 2006.

[2] For purposes of the comparison, S. 1783 as passed by the Senate is referred to as the "Senate amendment."

Provision	Present Law	House Bill	Senate Amendment
I. FUNDING AND RELATED PROVISIONS FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS **A. Funding Rules for Single-Employer Plans (secs. 101-102, 104, 111-112, and 114 of the House bill and secs. 101-102, 104, 111-112, and 115 of the Senate amendment)** **1. Minimum required contribution - in general**	The minimum required contribution is the amount needed to balance cumulative charges (e.g., for normal cost and to amortize past service liabilities, losses, and funding waivers) and credits (e.g., to amortize decreases in past service liabilities and gains) to the funding standard account. In addition, for **single-employer** plans covering more than 100 participants and, in general, having a funded current liability percentage of less than 90%, an additional deficit reduction contribution ("DRC") may be required, consisting of the sum of: (1) the expected increase in current liability for benefits accruing in the current year; and (2) a percentage of unfunded current liability.	Eliminates the funding standard account rules. The minimum required contribution generally consists of the sum of: (1) target normal cost; (2) any shortfall amortization charge (based on the amount needed to amortize any funding shortfall for a year over 7 years); and (3) any waiver amortization charge (based on the amount needed to amortize any funding waiver for a year over 5 years). Special actuarial assumptions apply in the case of plans in at-risk status.	Same as House bill.
2. Definition of target normal cost	No provision.	Target normal cost is the present value of benefits expected to accrue or be earned in the current year.	Same as House bill.

Provision	Present Law	House Bill	Senate Amendment
3. Definition of funding shortfall and funding target	No provision.	Funding shortfall.−A plan's funding shortfall for a year is the excess of the plan's funding target for the year over the value of plan assets, reduced by any credit balances. The funding shortfall for a year is generally amortized over 7 years. Funding target.−A plan's funding target for a year is the present value of all liabilities to participants and beneficiaries for the year.	Funding shortfall.−Same as House bill, except, in determining a plan's funding shortfall, a percentage of the plan's funding target applies for 2007 and 2008 (93 and 96% respectively). In the case of a plan covering no more than 100 participants, the percentages for 2007-2010 are 92, 94, 96, and 98% respectively. Funding target.−Same concept as House bill, but described as the present value of all benefits accrued or earned as of the beginning of the year.
4. Definition of shortfall amortization charge and shortfall amortization base	**In determining charges to the funding standard account of a single-employer plan, the amortization period for past service liabilities is 30 years and for losses is generally 5 or 10 years, depending on the nature of the loss. The IRS may grant an extension of the applicable amortization period if it determines that certain requirements are met. The portion of the DRC for a year that is attributable to unfunded current liability ranges from 18% to 30% of unfunded current liability, depending on the funded status of the plan.**	Shortfall amortization charge.−The shortfall amortization charge for a year is the sum of the annual installments needed to amortize over 7 years the shortfall amortization bases for the current year and the 6 preceding years **(to the extent preceding years are subject to the new rules, i.e., years after 2006)**. **Extensions of amortization periods are no longer available to single-employer plans.** Shortfall amortization base.−The shortfall amortization base for a year is the excess of the plan's funding shortfall for the year over the present	Shortfall amortization charge.−Same as House bill. Shortfall amortization base.−Same as House bill, except the special rule does not apply.

Provision	Present Law	House Bill	Senate Amendment
		value of any remaining annual installments attributable to shortfall amortization bases for preceding years. Under a special rule, no shortfall amortization base is required to be established for a year if the plan's funding target does not exceed the value of plan assets, reduced for this purpose only by any prefunding balance and only if the employer elects to use the prefunding balance to reduce the required contribution for the year. In applying the special rule to certain plans that are not subject to the DRC rules for 2006, a percentage of the plan's funding target applies for 2007-2010 (92, 94, 96, and 98% respectively).	
5. Waiver amortization charge	**The IRS may grant a funding waiver if it determines that certain requirements are met.** The amount of a funding waiver is amortized over 5 years.	The waiver amortization charge for a year is the sum of the annual installments needed to amortize over 5 years any funding waivers from the 5 preceding years.	Same as House bill.
6. Effect of no funding shortfall	No provision.	If the value of plan assets, reduced by any credit balances, equals or exceeds the funding target for the year, all shortfall and waiver amortization bases are eliminated, and **the required contribution is** target normal cost reduced by any excess.	Same as House bill.

Provision	Present Law	House Bill	Senate Amendment
7. Interest rate used to determine present value	**In determining current liability,** present value is determined using **an interest rate within a permissible range of the** 4-year weighted average of interest rates on (1) investment-grade long-term corporate bonds **with a permissible range of 90-100%** for 2004 and 2005, and (2) 30-year Treasury securities **with a permissible range of 90-105%** for years after 2005.	Present value is determined using 3 segment rates (0-5 years; more than 5 and up to 20 years; and more than 20 years), based on the corresponding portion of a yield curve based on a 3-year weighted average (50%, 35%, and 15%) of interest rates on investment-grade corporate bonds. The use of the segment rates is phased in over 2007-2009, except for plans established after 2006.	Same as House bill, except (1) the yield curve is based on a 12-month average of interest rates on investment-grade corporate bonds, and (2) the phase-in applies to all plans.
8. Mortality table used to determine present value	Present value is determined using the 1983 Group Annuity Mortality Table. Under proposed regulations, beginning in 2007, RP-2000 Mortality Tables are used with improvements in mortality (including future improvements) projected to the current year and with separate tables for annuitants and nonannuitants. Separate tables apply for disabled participants.	In general.−Present value is generally determined using RP-2000 Mortality Tables with improvements in mortality projected to the current year (with the effect of the mortality change phased in over 5 years, except for plans established after 2006). Use of plan-specific table.−Subject to certain requirements and Treasury approval, a plan-specific mortality table may be used. A plan-specific table can be used for the next year if Treasury fails to act on a request within 180 days.	In general.−Present value is generally determined using RP-2000 Mortality Tables as in effect on the date of enactment (with the effect of the mortality change phased in over 5 years) and as revised by Treasury at least every 10 years to reflect pension plan experience and projected trends. Separate tables apply for disabled participants. Use of plan-specific table.−Same as House bill, except that (1) in addition to the requirements under the House bill, there must be sufficient credible data for the table and, except as provided by the Secretary, the table is used by all plans maintained by members of the employer's controlled group, and (2) the 180-day period for Treasury action is extended while a request for further information from the employer is pending.

Provision	Present Law	House Bill	Senate Amendment
9. At-risk rules **(a) In general**	No provision.	Additional assumptions and a loading factor apply in determining the funding target and target normal cost of a plan in at-risk status. A plan is in at-risk status if, for the preceding year, the value of plans assets, reduced by any credit balances, was less than 60% of the plan's funding target **(determined without regard to at-risk status)**.	Additional assumptions apply in determining the funding target and target normal cost of a plan in at-risk status. A plan is in at-risk status if (1) the employer maintaining the plan is financially weak, and (2) the value of plan assets is less than 93% of the plan's funding target **(determined without regard to at-risk status)**.
(b) Definition of financially weak employer	No provision.	No provision.	An employer is financially weak if (1) as of each valuation date in a period of at least 3 consecutive plan years ending with the current year (not counting years before 2007), either (a) the employer has outstanding bonds rated below investment grade by all rating organizations, or (b) if the employer has no rated bonds, the employer is rated below investment grade by all rating organizations, and (2) at least 2 years in the period are "deterioration" years (i.e., the rating is the lowest possible or declines). An employer is not treated as financially weak if it is in a controlled group with a significant member (as determined under regulations) with outstanding bonds rated investment grade. If an employer has no rated bonds and is not rated, the employer is treated as financially weak only to the extent provided in regulations.

Provision	Present Law	House Bill	Senate Amendment
(c) At-risk actuarial assumptions and loading factors	No provision.	In determining present value, it is assumed that all participants elect benefits at such times and in such forms as result in the highest present value. A loading factor of 4% and $700 per participant applies in determining a plan's funding target. A loading factor of 4% applies in determining target normal cost.	In determining present value, it is assumed that (1) in general, participants eligible to retire in the current and 7 succeeding years retire at the earliest date under plan, and (2) all participants elect benefits in the form that results in the highest present value. At-risk funding target and at-risk target normal cost are in no event less than the amount determined without regard to the at-risk rules.
(d) Transition to at-risk funding target and at-risk normal cost	No provision.	If a plan is in at-risk status for fewer than 5 consecutive plan years, the plan's funding target or target normal cost is the sum of: (1) funding target or target normal cost determined without regard to the at-risk rules, plus (2) the applicable transition percentage of the increase in funding target or target normal cost as a result of at-risk status. The transition percentage is 20, 40, 60, and 80 for the first, second, third, and fourth year (respectively) the plan is in at-risk status.	Same as House bill, except **specifies that** years before 2007 are not taken into account and "improvement" years are not counted in determining the consecutive plan years a plan is in at-risk status. (Thus, the transition percentage does not increase for an improvement year.) Improvement year is a year in which the employer's credit is higher than for the preceding year (but still below investment grade).

Provision	Present Law	House Bill	Senate Amendment
(e) Exceptions to at-risk rules	No provision.	No provision.	The at-risk rules do not apply to (1) a plan having 500 or fewer participants for the preceding year, (2) an eligible cooperative plan, and (3) a plan that a person (other than the employer) is obligated to fund under an agreement with the PBGC, if the person is not financially weak.
10. Valuation date	A plan's valuation date generally may be any day during the plan year.	A plan's valuation date must be the first day of the plan year, except any day during the plan year may be used for a small plan, defined as having 500 or fewer participants for the preceding year.	Same as House bill, except small plan is defined as having 100 or fewer participants for the preceding year.
11. Value of plan assets	The value of plan assets is determined on the basis of any reasonable actuarial valuation method that takes into account fair market value and is permitted under regulations. Average value of plan assets may be based on value for a period not to exceed the 5 most recent plan years, including the current year. Actuarial value must be not less than 80% and not more than 120% of fair market value.	The value of plan assets is determined on the basis of any reasonable actuarial valuation method that takes into account fair market value and is permitted under regulations. The method may not provide for averaging of fair market values over more than the 36-month period ending with the month containing the plan's valuation date. Actuarial value must be not less than 90% and not more than 110% of fair market value.	The value of plan assets is generally fair market value. However, the value of plan assets may be determined on the basis of any reasonable actuarial valuation method providing for the averaging of fair market values if the method is permitted under regulations and does not provide for averaging of fair market values over more than the period beginning on the last day of the 12th month preceding the plan's valuation date and ending on the valuation date.

Provision	Present Law	House Bill	Senate Amendment
12. Credit balances **(a) In general**	A credit balance results if cumulative credits to the funding standard account exceed cumulative charges. A credit balance is reduced by charges to the funding standard account (unless a contribution is made to offset charges). A credit balance is credited with the plan's assumed interest rate regardless of the investment performance of the plan assets.	Two types of credit balances apply: (1) a funding standard carryover balance ("carryover" balance), based on any credit balance under the funding standard account for the last year before the new funding rules are effective, and (2) a prefunding balance, based on contributions that exceed required contributions under the new funding rules. (Any carryover balance must be used before a prefunding balance is used.) A carryover or prefunding balance is reduced by any amount used to offset the required contribution for a year and adjusted (as provided in regulations) to reflect the investment performance of the plan assets for the preceding year.	Same as House bill, except only a prefunding balance applies, based on any credit balance under the funding standard account for the last year before the new funding rules are effective plus contributions that exceed required contributions under the new funding rules.

Provision	Present Law	House Bill	Senate Amendment
(b) Ability to use credit balance to reduce required contribution	A credit balance automatically reduces any required contribution regardless of the plan's funded status.	General rule.−An employer chooses whether to use a credit balance to reduce a required contribution. Restriction on use.−A credit balance cannot be used to reduce the required contribution for a year if, for the preceding year, the value of plan assets (reduced by any prefunding balance) was less than 80% of the plan's funding target **(determined without regard to at-risk status)**.	General rule.−Same as House bill. Restriction on use.−If, for the preceding year, the value of plan assets (without reduction by any prefunding balance) was less than 80 percent of the plan's funding target **(determined without regard to at-risk status)**, the employer must, regardless of any prefunding balance, contribute the greater of (1) target normal cost, or (2) 25% of the otherwise required contribution (thus, a prefunding balance can be used to offset only the portion of the required contribution exceeding this amount).

Provision	Present Law	House Bill	Senate Amendment
(c) Reduction of value of plan assets by credit balance in determining required contributions	The value of plan assets is not reduced by any credit balance in determining whether a DRC is required (i.e., generally whether the plan's funded current liability percentage is at least 90%). The value of plan assets is reduced by any credit balance in determining the amount of a required DRC.	The value of plan assets is reduced by any carryover and prefunding balances in determining the plan's funding shortfall and whether the value of plan assets exceeds the plan's funding target (so that normal cost is reduced by any excess). The reduction does not apply if, pursuant to an agreement with the PBGC, a carryover or prefunding balance cannot be used to reduce required contributions. Under a special rule, in determining whether a shortfall amortization base must be established for the year, the value of plan assets is reduced only by any prefunding balance **(i.e., not by any carryover balance)** and only if the employer elects to use the prefunding balance to reduce the required contribution for the year.	Same as House bill, except (1) only a prefunding balance applies, (2) no exception applies for agreements with the PBGC, and (3) no special rule applies as to whether a shortfall amortization base must be established for the year.
(d) Reduction of value of plan assets by credit balance in determining funded status	No provision.	The value of plan assets is generally reduced by any carryover and prefunding balances in determining the plan's funded status, such as for purposes of whether benefit limitations apply.	The value of plan assets is not reduced by any prefunding balance in determining the plan's funded status.

Provision	Present Law	House Bill	Senate Amendment
(e) Election to reduce credit balance to avoid reduction of value of plan assets	No provision.	An employer may elect to reduce any carryover balance or prefunding balance (after any carryover balance is exhausted), so that a corresponding reduction in the value of plan assets no longer applies. The amount by which the employer elects to reduce any carryover or prefunding balance is no longer available to reduce required contributions.	No provision. (The value of plan assets is not reduced by any prefunding balance.)
13. Quarterly contribution requirements	Quarterly contributions are required if, for the preceding year, the plan's funded current liability percentage was less than 100%. If a quarterly installment is not made, interest is charged at the greater of (1) 175% of the Federal mid-term rate, and (2) the plan's assumed interest rate.	Quarterly contributions are required if, for the preceding year, the plan had a funding shortfall. If a quarterly installment is not made, interest is charged at the greater of (1) 175% of the Federal mid-term rate, and (2) the plan's effective rate of interest (i.e., the single rate of interest which, if used to determine the plan's funding target, results in the same funding target as determined using the segment rates).	Quarterly contributions are required if, for the preceding plan year, the plan (1) covered more than 100 participants, and (2) had a funding shortfall of more than $1 million. If a quarterly installment is not made, interest is charged at the plan's effective rate of interest plus 5 percentage points.
14. Effective date		Plan years beginning after 2006.	Same as House bill.
B. Extension of Long-Term Corporate Bond Rate to 2006 (sec. 301 of House bill and sec. 121 of Senate amendment)	In determining current liability, the interest rate used is a 4-year weighted average of interest rates on (1) investment-grade long-term corporate bonds for 2004 and 2005, and (2) 30-year Treasury securities for years after 2005.	A 4-year weighted average of interest rates on investment-grade long-term corporate bonds is used in determining current liability for 2006.	Same as House bill.

Provision	Present Law	House Bill	Senate Amendment
C. Modification of Transition Rule for Certain Plans (sec. 121 of the House bill and sec. 304 of the Senate amendment)	Special rules apply to a plan sponsored by a company engaged primarily in interurban or interstate passenger bus service. For 2004 and 2005: (1) the plan is not subject to the DRC or quarterly contribution requirements, and (2) the plan's mortality table is used in determining PBGC variable rate premiums. For years after 2005 and before 2010, the plan is not subject to the DRC requirements if the plan is funded at certain levels and certain contributions are made.	<u>Rule for 2006</u>.−The special rules applicable for 2004 and 2005 apply for 2006. <u>Years after 2006</u>.−For years after 2006: (1) the plan's mortality table is used in determining required contributions and PBGC variable rate premiums, (2) a special phase-in of the plan's funding target applies for purposes of whether a shortfall amortization base is required for 2007-2011, and (3) the plan is not subject to the quarterly contribution requirements.	<u>Rule for 2006</u>.−Same as House bill. <u>Years after 2006</u>.−For years after 2006: (1) the plan's mortality table is used in determining required contributions and PBGC variable rate premiums, and (2) in determining the plan's funding shortfall, the value of plan assets is not reduced by any prefunding balance if, pursuant to an agreement with the PBGC, the prefunding balance cannot be used to reduce required contributions.
D. Special Rules for Multiple Employer Plans of Certain Cooperatives (sec. 105 of the Senate amendment)	No provision.	No provision.	Provides a delayed effective date for the new funding rules and PBGC premium increases (generally plan years beginning after 2016) and a special interest rate rule for certain multiple-employer plans in existence on July 26, 2005, and maintained by rural cooperatives and cooperative organizations.
E. Temporary Relief for Certain Rescued Plans (sec. 106 of the Senate amendment)	No provision.	No provision.	Provides a delayed effective date for the new funding rules and PBGC premium increases (generally plan years beginning after 2013) and a special interest rate rule for a "rescued" plan in existence on July 26, 2005.

Provision	Present Law	House Bill	Senate Amendment
			A rescued plan is a plan sponsored by an employer in bankruptcy, giving rise to a claim by the PBGC of between $100 million and $150 million, and the sponsorship of which was assumed by an employer outside the controlled group, resolving the PBGC claim.
F. Benefit Limitations under Single-Employer Plans (secs. 103 and 113 of the House bill and secs. 103, 113 and 805 of the Senate amendment) **1. Shutdown and other unpredictable contingent event benefits**	A defined benefit plan may provide for unpredictable contingent event benefits, i.e., benefits that depend on contingencies other than age, service, compensation, death or disability, including benefits payable as a result of a plant shutdown. Unpredictable contingent event benefits are not taken into account for **deficit reduction contribution** purposes until the event has occurred. Defined benefit plans are not permitted to provide "layoff" benefits (i.e., severance benefits), but may provide subsidized early retirement benefits, including early retirement window benefits.	Plant shutdown and other unpredictable contingent event benefits may not be provided under a plan if, for the plan year in which the event giving rise to the benefits occurs, the plan is less than 80% funded, or would be less than 80% funded taking into account the benefits, unless the employer, in addition to any required contribution, contributes a certain amount as determined under the provision. The limitation does not apply for first 5 years of plan's existence.	No provision. (However, under sec. 404 of the Senate amendment, the PBGC guarantee for plant shutdown and other unpredictable contingent event benefits is phased in over 5 years starting from when the event occurs.)

Provision	Present Law	House Bill	Senate Amendment
2. Benefit increases	A plan amendment increasing a plan's current liability may not be adopted if the plan's funded current liability percentage would be less than 60%, taking into account the amendment, unless security is provided. (Plan amendments increasing benefits are also generally prohibited while a funding waiver or amortization extension is in effect or the plan sponsor is involved in bankruptcy proceedings.)	Limitation on benefit increases.−A plan amendment may not increase benefits if the plan is less than 80% funded, or would be less than 80% funded taking into account the benefit increase, unless the employer, in addition to any required contribution, contributes a certain amount as determined under the provision. The limitation does not apply for the first 5 years of a plan's existence. (The provision does not change the prohibition on benefit increases while a funding waiver **[strike: or amortization extension [since no more amortization extensions for single-employer plans]]** is in effect or a plan sponsor is involved in bankruptcy proceedings.) Benefit increase.−A benefit increase resulting from an increase in compensation or an increase in benefit rate under the plan is treated as having been made by a plan amendment.	Limitation on benefit increases.− Same as House bill, except the 80% requirement is applied on the basis of the plan's "adjusted" funded status. Adjusted funded status is determined by increasing the plan assets and liabilities by certain distributions (such as lump sums) made during the 2 preceding years. Benefit increase.−Benefit increases resulting from compensation increases under a compensation-based benefit formula are not subject to the provision. In the case of benefits not based on compensation, the provision does not apply to a plan amendment increasing benefits if the rate of increase does not exceed the contemporaneous rate of increase in participants' average wages.

Provision	Present Law	House Bill	Senate Amendment
3. Certain types of distributions	In the case of a liquidity shortfall with respect to a plan, certain forms of distribution (such as lump-sums) are prohibited.	Plans must provide that certain **accelerated** forms of distribution (such as lump-sums) will not be made if the plan is less than 80% funded. An exception applies if, as of June 29, 2005, and thereafter, the plan provides for no benefit accruals. (The present-law liquidity shortfall provision is retained.)	Plans must provide that: (1) certain **accelerated** forms of distribution (such as lump-sums) above a **certain** amount will not be made during a prohibited period (as defined below) and (2) if the plan's adjusted funded status for the preceding year was less than 60%, the employer, in addition to any required contribution, must contribute for the current year and each succeeding year in the prohibited period, an amount sufficient for an adjusted funded status of at least 60%. **Distributions during a prohibited period are generally limited to the lesser of: (1) 50% of the amount otherwise payable under the plan, and (2) the present value of the maximum PBGC guarantee with respect to the participant.** Prohibited period generally includes (1) the period starting with the first year an additional contribution is required (unless the plan has an adjusted funded status of at least 60% before the end of the year) and ending after 2 consecutive plan years for which the plan's adjusted funded status is at least 60%, (2) any period the plan sponsor is in bankruptcy, and (3) any liquidity shortfall period.

Provision	Present Law	House Bill	Senate Amendment
4. Additional benefit accruals	No provision.	Plans must provide that, if the plan is less than 60% funded as of the valuation date for the year, all benefit accruals under the plan must cease. The limitation does not apply for the first 5 years of a plan's existence.	Plans must provide that, if the plan's adjusted funded status for the preceding plan year was less than 60%, all benefit accruals under the plan must cease as of the current year and until the plan's actuary certifies the plan's adjusted funded status is at least 60%. The limitation does not apply if the plan's actuary certifies that the employer, in addition to any required contribution, has contributed before the end of the current plan year an amount sufficient for an adjusted funded status of 60%. The limitation does not apply for the first 5 years of a plan's existence.
5. Use of credit balance in determining funded status	No provision.	In determining funded status, the value of plan assets is reduced by any credit balances unless the plan is 100% funded without applying the reduction. In the case of certain plans **[strike: that are not subject to the DRC rules for 2006]**, in applying this rule for 2007-2010, the plan's funded status must be 92, 94, 96, and 98% respectively. (Under the general credit balance rules, an employer may elect to reduce any credit balance, so that a corresponding reduction in the value of plan assets no longer applies, thus increasing the plan's funded status.)	The value of plan assets is not reduced by any credit balance in determining adjusted funded status for purposes of the benefit limitations. The provision specifies that a credit balance cannot be used in lieu of any additional contribution required to avoid a benefit limitation.

Provision	Present Law	House Bill	Senate Amendment
6. Special rules for collectively bargained plans	No provision.	An employer is deemed to elect to reduce a portion of any credit balance to the extent such a reduction would raise the funded status of the plan to a level that would prevent a benefit limitation from applying.	The benefit limitations do not apply; instead, the employer, in addition to any required contribution, must contribute an amount sufficient to increase the plan's adjusted funded status to the level needed to avoid any limitation.
7. Additional rules relating to contributions to avoid limitations	No provision.	No provision.	An employer may provide security instead of making additional contributions. Additional contributions required to avoid benefit limitations are treated as required contributions for certain purposes, including excise tax purposes. (Under the general credit balance rules, additional contributions to avoid benefit limitations do not increase a credit balance.)
8. Notice requirement	No provision.	Subject to an ERISA penalty, a plan administrator generally must notify participants within 30 days if the limitation on forms of distribution applies.	Same as House bill, except (1) notice must also be provided if the limitation on additional benefit accruals applies, and (2) the Secretary of Treasury is given regulatory authority over the notice requirement.

Provision	Present Law	House Bill	Senate Amendment
9. Presumptions as to funded status	No provision.	Limitation for preceding year.−If a plan was subject to a benefit limitation for the preceding year, the plan's funded status is presumed to be the same for the current year (so the limitation continues to apply) until the plan actuary certifies the plan's actual funded status. Actuarial certification delayed.--If the plan actuary fails to certify the plan's funded status by the 10th month of the current year, the plan is presumed to be less than 60% funded. Presumed deterioration.−If a plan was funded for the preceding year at less than 10 percentage points above the level at which a benefit limitation applies and the plan's actuary fails to certify the plan's funded status by the 4th month of the current year, the plan's funded status is presumed to be 10 percentage points lower than the preceding year (so benefit limitation applies).	Limitation for preceding year.−Same as House bill, except the presumption rules apply on the basis of the plan's adjusted funded status. Actuarial certification delayed.−Same as House bill, except the presumption rules apply on the basis of the plan's adjusted funded status. Presumed deterioration.−No provision.

Provision	Present Law	House Bill	Senate Amendment
10. Treatment of plan after benefit limitation ends	No provision.	If a limitation on certain forms of distribution or additional benefit accruals ceases to apply to a plan (unless it applied only because of presumed funded status), the plan may provide for the resumption of such distribution forms or accruals only by adoption of a plan amendment, **subject to the limitation on benefit increases under the provision**.	If a limitation on certain forms of distribution or additional benefit accruals ceases to apply to a plan, all forms of distribution and benefit accruals automatically resume unless the plan provides otherwise. Nothing in the provision is to be construed as affecting a plan's treatment of benefits which would have been paid or accrued but for the limitation.
11. Effective date	No provision.	<u>Plant shutdown benefits</u>.−Generally effective for plant shutdowns and similar events occurring after 2006. <u>Other benefit limitations</u>.−Generally effective for plan years beginning after 2006, with a special rule for determining 2006 funded status for purposes of applying the presumption rules in 2007. <u>Collectively bargained plans</u>.−A delayed effective date applies to plans maintained pursuant collective bargaining agreements ratified before the date of enactment. In no event is provision effective later than 2009.	<u>Plant shutdown benefits</u>.−No provision. **(However, sec. 404 of the Senate amendment phases in the PBGC guarantee for plant shutdown and other unpredictable contingent event benefits.)** <u>Other benefit limitations</u>.−Same as House bill, except the provision (1) does not include the special rule for 2006 funded status, and (2) specifies that years before 2007 are not taken into account **(thus, the limitations on distributions and additional accruals do not apply before 2008)**. <u>Collectively bargained plans</u>.−A delayed effective date applies to plans maintained pursuant collective bargaining agreements ratified before 2007. In no event is provision effective later than 2010.

Provision	Present Law	House Bill	Senate Amendment
G. Restrictions on Funding of Nonqualified Deferred Compensation Plan (sec. 122 of the House bill and sec. 303 of the Senate amendment)	Amounts deferred under a nonqualified deferred compensation plan for all taxable years are currently includible in gross income to the extent not subject to a substantial risk of forfeiture and not previously included in gross income, unless certain requirements are satisfied. Assets set aside for purposes of paying nonqualified deferred compensation are treated as property transferred in connection with the performance of services under Code section 83 at the time set aside if located outside of the United States. A transfer of property also occurs with respect to compensation deferred under a nonqualified deferred compensation plan if the plan provides that upon a change in the employer's financial health, assets will be restricted to the payment of nonqualified deferred compensation. If the preceding requirements are not satisfied, in addition to current income inclusion, interest applies at the underpayment rate plus 1 percentage point and the amount required to be included in income is subject to a 20% additional tax.	If, during any period in which a defined benefit pension plan of an employer is in at-risk status, assets are set aside for purposes of paying deferred compensation, such transferred assets are treated as property transferred in connection with the performance of services. The rule does not apply in the case of assets that are set aside before the defined benefit pension plan is in at-risk status. If a nonqualified deferred compensation plan of an employer provides that assets will be restricted to the provision of benefits under the plan in connection with the at-risk status of any defined benefit pension plan of the employer, or assets are so restricted, such assets are treated as property transferred in connection with the performance of services. The present-law rules relating to income inclusion, interest rate, and the 20% additional tax apply.	Same as House bill, except that (1) a deemed transfer does not occur merely as a result of plan terms providing for assets to be restricted, (2) the provision applies during a restricted period and is limited to covered employees, and (3) the provision includes notice requirements and an ERISA prohibition on funding nonqualified deferred compensation, with a fiduciary right of action to recover restricted assets. The provision applies if nonqualified deferred compensation is funded when the qualified pension plan is in a restricted period. A restricted period includes the period when (1) the plan's adjusted funding status is less than 60% (80% in the case of a plan in at-risk status), (2) any period that the plan sponsor is in bankruptcy, and (3) in the case of a plan that terminates, the 12-month period beginning on the date which is 6 months before the termination date of the plan if, as of the termination date, plan assets are not sufficient for benefit liabilities. Application of the provision is limited to covered employees (i.e., the CEO and 4 highest paid officers (other than the CEO) of the employer.)

Provision	Present Law	House Bill	Senate Amendment
		Effective date.–Transfers or other reservations of assets after December 31, 2005.	Effective date.–Transfers or other reservations of assets after December 31, 2006.

Provision	Present Law	House Bill	Senate Amendment
II. FUNDING AND RELATED PROVISIONS FOR MULTIEMPLOYER DEFINED BENEFIT PENSION PLANS **A. General Funding Rules for Multiemployer Plans (secs. 201 and 211 of the House bill and secs. 201 and 211 of the Senate amendment)**			
1. Amortization periods	The minimum required contribution under the funding rules is the amount needed to balance cumulative charges (e.g., for normal cost and to amortize past service liabilities, losses, and funding waivers) and credits (e.g., to amortize decreases in past service liabilities and gains) to the funding standard account (or an alternative funding standard account). Amortization periods for multiemployer plans are generally (1) 30 years for past service liabilities, (2) 15 years for net experience gains and losses, (3) 30 years for gains and losses from changes in actuarial assumptions, and (4) 15 years for funding waivers.	**In the case of amortization bases established after the provision is effective,** the amortization periods are changed to 15 years for (1) past service liabilities (or the period over which a benefit increase is payable, if shorter), and (2) gains and losses from changes in actuarial assumptions, so amortization periods for multiemployer plans are generally 15 years. The option of using an alternative funding standard account is eliminated.	Same as House bill.

Provision	Present Law	House Bill	Senate Amendment
2. Extensions of amortization periods	The IRS may extend for up to 10 years the amortization period for unfunded liabilities and losses if the IRS determines certain requirements are met.	The IRS is required to extend for up to 5 years the amortization period for unfunded liabilities and losses if certain criteria are met. (The IRS may also extend an amortization period for up to 5 additional years if the IRS determines the present-law requirements are met.)	Same as House bill, except requires an actuarial certification that the criteria are met. (Also requires the IRS to act on a request for an additional extension within 180 days and to provide detail as to the reasons for a negative decision.)
3. Interest rate applicable to funding waivers and extensions of amortization periods	A plan's funding standard account is generally charged or credited with interest at the rate used under the plan in determining costs (the "plan" rate). In the case of single-employer plans, the interest rate charged with respect to an extension of the amortization period is the greater of (1) 150% of the Federal mid-term rate and (2) the plan rate. The Federal short-term rate applies to funding waivers and extensions of amortization periods granted to multiemployer plans.	The interest rate applicable to funding waivers and extensions of amortization periods is changed to the greater of (1) 150% of the Federal mid-term rate, or (2) the plan rate, with a grandfather for waivers or extensions pursuant to applications filed before June 30, 2005.	The special interest rate rule for funding waivers and extensions of amortization periods is eliminated, so that the plan rate applies, with a grandfather for extensions of amortization periods pursuant to applications filed before June 30, 2005.
4. Controlled group liability for required contributions	In the case of a single-employer plan, liability for minimum required contributions applies to all members of the employer's controlled group. Controlled-group liability does not apply to contributions an employer is required to make to a multiemployer plan.	Controlled group liability for minimum required contributions does not apply with respect to multiemployer plans **(i.e., no change from present law)**.	Liability for minimum required contributions to a single-employer or multiemployer plan applies to all members of the employer's controlled group.

Provision	Present Law	House Bill	Senate Amendment
5. Actuarial assumptions	The actuarial assumptions and methods used in determining required contributions for multiemployer plans must (1) be reasonable in the aggregate (taking into account the plan's experience and reasonable expectations), and (2) in combination, offer the actuary's best estimate of anticipated plan experience.	The reasonableness requirement for actuarial assumptions and methods used with respect to multiemployer plans is changed to require each assumption and method to be reasonable (taking into account the plan's experience and reasonable expectations).	Same as House bill.
6. Shortfall funding method	A multiemployer plan may use the shortfall method, which adapts the plan's otherwise applicable funding method by determining charges to the funding standard account on the basis of estimated units of service or production (such as hours worked under a collective bargaining agreement). Use of the shortfall method and changes to use of the shortfall method are generally subject to IRS approval.	No provision.	A multiemployer plan's adoption, use, or ceasing to use the shortfall method is deemed to be approved by the IRS if (1) the plan has not used the shortfall method during the preceding 5-year period, and (2) no extension of an amortization period with respect to the plan is in effect or has been in effect for such 5-year period. Plan amendments increasing benefits generally cannot be adopted while the shortfall method is in use. The provision is not to be construed to affect a plan's ability to adopt the shortfall method with IRS approval or right to change funding methods as otherwise permitted.
7. Effective date		Plan years beginning after December 31, 2006.	Same as House bill, except for the December 31, 2014, sunset generally applicable to the multiemployer plan provisions of the bill.

Provision	Present Law	House Bill	Senate Amendment
B. Additional Funding Rules for Multiemployer Plans in Endangered or Critical Status (secs. 202 and 212 of House bill and secs. 202 and 212 of Senate Amendment)			
1. In general	Additional required contributions and benefit reductions may apply if a multiemployer plan is in reorganization status or is insolvent. A plan is in reorganization status for a year if the contribution needed to balance charges and credits to the funding standard account exceeds the plan's "vested benefits charge" (generally the amount needed to amortize unfunded vested benefits over certain periods). A plan is generally insolvent if the plan's available resources are not sufficient to pay benefits due for the year (or are expected not to be sufficient to pay benefits due in the next year). An excise tax applies if minimum required contributions are not made.	Requires the adoption of and compliance with (1) a funding improvement plan in the case of a multiemployer plan in endangered status, and (2) a rehabilitation plan in the case of a multiemployer plan in critical status. Additional required contributions and benefit reductions apply to a plan in critical status in certain circumstances. For a plan in critical status, failure to make minimum required contributions under the otherwise applicable funding rules does not result in an excise tax, provided that a rehabilitation plan is adopted and followed.	Same as House bill, except, in the case of a plan in critical status, additional required contributions and benefit reductions do not apply, and employers are relieved of liability for minimum required contributions under the otherwise applicable funding rules, provided that a rehabilitation plan is adopted and followed.

Provision	Present Law	House Bill	Senate Amendment
2. Annual certification of status; notice; annual reports	Certain information must be provided in an annual report with respect to a plan and a summary of the annual report must be provided to plan participants. Notices to certain parties are required in various circumstances.	<u>Annual certification</u>.−Requires certification by a plan's actuary by the 90th day of each plan year of whether the plan is in endangered or critical status; failure to certify causes the plan to be presumed in critical status and an ERISA penalty of up to $1,100 a day applies. <u>Notice</u>.−Requires the plan sponsor of a plan in endangered or critical status to provide notice of such status to plan participants and beneficiaries, bargaining parties, the Secretaries of Treasury and Labor, and the PBGC. <u>Annual reports</u>.−Requires a summary of a funding improvement or rehabilitation plan and an update of the plan's funding percentage to be included in the plan's annual report and the summary annual report.	<u>Annual certification</u>.−Same as House bill, except (1) for a plan with a funding improvement or rehabilitation plan, annual certification of the plan's scheduled progress is also required, and (2) a failure to certify the plan's status is treated as a failure to file an annual report for the plan (so an ERISA penalty of up to $1,100 a day applies). <u>Notice</u>.−Same as House bill. <u>Annual reports</u>.−Requires annual updates to a funding improvement or rehabilitation plan and inclusion of the update in the plan's annual report.

Provision	Present Law	House Bill	Senate Amendment
3. Rules for plans in endangered status	No provision.	Definition of endangered status.−A plan is in endangered status if (1) its funded percentage (i.e., the value of plan assets as a percentage of accrued liability) is less than 80%, or (2) the plan has an accumulated funding deficiency or is projected to in the next 6 years. Information to be provided to bargaining parties.−Within 90 days of certification of a plan's endangered status, the plan sponsor must provide the bargaining parties with options for revised benefit and contribution structures to enable the plan to meet requirements of the funding improvement plan, including (1) an option based on reductions in future benefit accruals and no contribution increases (except as needed to meet the requirements of the funding improvement plan after maximum permissible reductions in future benefit accruals), and (2) an option based on increased contributions and no reductions in future benefit accruals.	Definition of endangered status.−Same as House bill, except the term "seriously endangered" is used for a plan having (or projected to have) an accumulated funding deficiency **in the next 6 years**. Information to be provided to bargaining parties.−Within 30 days of the adoption of a funding improvement plan, in the case of a plan in seriously endangered status, the plan sponsor must provide the bargaining parties with options for revised benefit and contribution structures to enable the plan to meet the requirements of the funding improvement plan, including an option based on reductions in future benefit accruals and no contribution increases (except as needed to meet the requirements of the funding improvement plan after maximum reductions in future benefit accruals). The plan sponsor may also provide other appropriate information.

Provision	Present Law	House Bill	Senate Amendment
		Additional options must be provided at the request of an employer employing, or an employee organization representing, at least 5% of the plan's active participants. The plan sponsor may also provide other appropriate information. Funding improvement plan.−The plan sponsor must adopt a funding improvement plan within 240 days of certification of endangered status. Under a general rule, a funding improvement plan must be expected, over the funding improvement period, to decrease the percentage by which the plan is underfunded by one-third and avoid an accumulated funding deficiency. Under a special rule, if the plan's funded percentage is 70% **or less** (or between 70% and 80% and certain certifications are made), the percentage by which the plan is underfunded must decrease by one-fifth over 15 years.	Funding improvement plan.−The plan sponsor must adopt a funding improvement plan within 240 days of the deadline for certifying a plan's status. For seriously endangered plans, the general rule under the House bill applies (i.e., the percentage by which the plan is underfunded must decrease by one-third and any accumulated funding deficiency must be avoided). For other plans, the plan's funded percentage generally must be expected to increase to the lesser of (1) 80%, or (2) 110% of the plan's funded percentage as of the beginning of the funding improvement period. However, the special rule under the House bill applies if the plan's funded percentage is less than 70% (or between 70% and 80% and certain certifications are made).

Provision	Present Law	House Bill	Senate Amendment
		Funding improvement period.−The funding improvement period is the 10-year period beginning on the earlier of (1) the date two years after the date the funding improvement plan is adopted, and (2) the first day of the first plan year beginning after the expiration of collective bargaining agreements that were in effect when the plan's endangered status was certified and that cover at least 75% of the plan's active participants. Requirements pending approval of plan and during funding improvement period.−The plan sponsor must take reasonable actions necessary to increase the plan's funded status and avoid a funding deficiency; the level of plan contributions and the scope of plan coverage may not be reduced; benefits may not be increased unless the plan actuary certifies the requirements of the funding improvement plan will still be met; and distribution amounts must be restricted.	Funding improvement period.−Same as House bill, except that (1) the relevant collective bargaining agreements are determined as of the deadline for certifying a plan's status, and (2) the period ends if the plan leaves endangered status or enters critical status. Requirements pending approval of plan and during funding improvement period.−Same as House bill, except also allows benefit increases under a plan that is not seriously endangered if paid for by increased contributions, does not restrict distribution amounts, and provides for updates of the contribution schedules.

Provision	Present Law	House Bill	Senate Amendment
		Penalty for failure to adopt a funding improvement plan.−The plan is deemed to be in critical status and an ERISA penalty of up to $1,100 a day applies. (The present-law excise tax also applies if the plan has an accumulated funding deficiency.) Failure to satisfy funding improvement plan requirements.−No provision.	Penalty for failure to adopt a funding improvement plan.− Failure is treated as a failure to file an annual report for the plan (so an ERISA penalty of up to $1,100 a day applies). (The present-law excise tax also applies if the plan has an accumulated funding deficiency.) Failure to satisfy funding improvement plan requirements.−If a plan fails to meet the requirements of the funding improvement plan by the end of the funding improvement period, the present-law excise tax applies, based on the greater of (1) the amount of contributions needed to increase the plan's funded status to meet the requirements of the funding improvement plan, or (2) the plan's accumulated funding deficiency.
4. Rules for plans in critical status	No provision.	Definition of critical status.−A plan may be in critical status based on a combination of various factors, such as its funding percentage, an actual or projected accumulated funding deficiency, and the value of plan assets compared with expected benefit payments. A plan is also presumed in critical status if plan certification or endangered plan requirements are not met.	Definition of critical status.−Same as House bill, except no presumed critical status.

Provision	Present Law	House Bill	Senate Amendment
		Additional contributions during critical status.–Additional contributions (referred to as a "surcharge") are required in the amount of 10% (5% for the first year of critical status) of the contributions each employer is otherwise required to make under the collective bargaining agreement. Employers must be provided with advance notice of surcharges. Surcharges cannot be the basis for benefit accruals under the plan and are generally disregarded in determining an employer's withdrawal liability. Surcharges cease to apply as of the date a collective bargaining agreement is renegotiated to include (1) a schedule of benefits and contributions pursuant to the rehabilitation plan, or (2) otherwise collectively bargained changes. Reductions to previously earned benefits.–The plan trustees may reduce or eliminate certain benefits and benefit options (other than accrued benefits payable at normal retirement age and certain annuity options), except for participants and beneficiaries in pay status for at least	Additional contributions during critical status.–No provision. Reductions to previously earned benefits.–No provision.

Provision	Present Law	House Bill	Senate Amendment
		a year before the plan enters critical status. Appropriate benefit reductions may be made based on the outcome of collective bargaining over schedules of contribution increases and benefit reductions to achieve the rehabilitation plan standards (including benefits of participants with respect to whom contributions are not currently required, based on the plan's overall funding status and future prospects). Benefit reductions are disregarded in determining an employer's withdrawal liability.	
		Information to be provided to bargaining parties.−Within 90 days of certification or presumption of a plan's critical status, the plan sponsor must provide the bargaining parties with options for contribution increases and benefit reductions to meet the requirements of the rehabilitation plan, including (1) an option based on reductions in future benefit accruals and no contribution increases, and (2) the contribution increases that would still be needed after maximum permissible reductions in future benefit accruals. Additional options must be provided at the request of an employer employing, or an employee organization representing, at least 5% of the plan's active participants.	Information to be provided to bargaining parties.−Within 30 days of the adoption of a rehabilitation plan, the plan sponsor must provide the bargaining parties with options for revised benefit and contribution structures to enable the plan to meet the requirements of the rehabilitation plan. The options must include a designated default schedule based on (1) maximum permissible reductions in future benefit accruals and other benefits, and (2) no contribution increases except as needed after such reductions. The plan sponsor may also provide other appropriate information.

Provision	Present Law	House Bill	Senate Amendment
		Rehabilitation plan.−The plan sponsor must adopt a rehabilitation plan within 240 days of certification of critical status. A rehabilitation plan generally must (1) provide for measures agreed to by the bargaining parties (such as increased contributions and reduced future benefit accruals), so that, over the rehabilitation period, the plan ceases to be in critical status, or (2) if the plan sponsor determines that, with all reasonable measures, the plan would not cease to be in critical status by the end of the rehabilitation period, reasonable measures to forestall insolvency. The rehabilitation plan must provide annual standards for meeting the applicable requirements. Rehabilitation period.−The rehabilitation period is the 10-year period beginning on the earlier of (1) the date two years after the date the rehabilitation plan is adopted, and (2) the first day of the first plan year beginning after the expiration of collective bargaining agreements that were in effect when the plan's critical status was certified or presumed and that cover at least 75% of the plan's active participants.	Rehabilitation plan.−Same as House bill, except (1) adoption is required within 240 days of the deadline for certifying a plan's status, (2) in the case of a determination that the plan cannot emerge from critical status by the end of the rehabilitation period, background information is required, (3) annual standards are not required, and (4) the designated default schedule automatically applies if the bargaining parties fail to adopt a collective bargaining agreement consistent with the requirements of the rehabilitation plan. Rehabilitation period.−Same as House bill, except that (1) the relevant collective bargaining agreements are determined as of the deadline for certifying a plan's status, (2) the period ends if the plan leaves critical status, and (3) a plan remains in critical status until the plan's actuary certifies the plan is not projected to have an accumulated funding deficiency in the current year or the 9 following years.

Provision	Present Law	House Bill	Senate Amendment
		Rules for reductions in future benefit accrual rates.−Reductions must be applied to active participants in proportion to the extent contribution increases apply to their employer; a limit applies on the rate to which benefit accruals can be reduced; restored benefit accrual rates may not be reduced. Requirements pending approval and during rehabilitation plan.−The level of plan contributions and scope of plan coverage may not be reduced; benefits may not be increased unless the plan actuary certifies the requirements of the rehabilitation plan will still be met; and distribution amounts must be restricted. Contribution and benefit accrual schedules may be updated (but not more often than every 3 years.) Failure of employer to make contributions.−The plan sponsor may treat an employer's failure to make contributions required under the rehabilitation plan as a withdrawal or partial withdrawal from the pension plan.	Rules for reductions in future benefit accrual rates.−Limits rate to which benefit accruals can be reduced similar to House bill; provides different protection from House bill for certain restored benefits. Benefit reductions are disregarded in determining an employer's withdrawal liability. Requirements pending approval and during rehabilitation plan.−Same as House bill, except (1) benefit increases must be paid for by increased contributions, (2) contribution schedules may be updated (with update required at least every 3 years), and (3) the plan sponsor must consider the impact of the rehabilitation plan and schedules on bargaining parties with fewer than 500 employees. Failure of employer to make contributions.−No provision.

Provision	Present Law	House Bill	Senate Amendment
		Penalty for failure to adopt a rehabilitation plan.−Future benefit accruals must be reduced to the level needed for the plan to leave critical status without increased contributions, and an ERISA penalty of up to $1,100 a day applies. (An excise tax also applies as described below.)	Penalty for failure to adopt a rehabilitation plan.−Failure is treated as a failure to file an annual report for the plan (so an ERISA penalty of up to $1,100 a day applies). (The present-law excise tax also applies if the plan has an accumulated funding deficiency.)
5. Application of excise tax to plans in critical status	If a multiemployer plan has an accumulated funding deficiency for a year, an excise tax of 5% generally applies, increasing to 100% if contributions sufficient to eliminate the funding deficiency are not made within a certain period.	For a plan in critical status, the present-law excise tax is replaced with (1) in the case of a failure to adopt a rehabilitation plan, an excise tax on the plan sponsor of the greater of (a) the excise tax otherwise applicable to any accumulated funding deficiency, or (b) $1,100 times the number of days in the period beginning with the plan's entry into critical status and ending with the adoption of a rehabilitation plan, and (2) in the case of a failure to make a contribution required under a rehabilitation plan, an excise tax on the employer in the amount of the missed contribution.	For a plan in critical status, if a rehabilitation plan is adopted and complied with, (1) employers are not liable for contributions otherwise required under the general funding rules, and (2) the present-law excise tax does not apply. If a plan fails to leave critical status at the end of the rehabilitation period or make scheduled progress under a rehabilitation plan for 3 consecutive years, the present-law excise tax applies, based on the greater of (1) the amount of contributions needed to leave critical status, or (b) the plan's accumulated funding deficiency.

Provision	Present Law	House Bill	Senate Amendment
6. Additional rules	No provision.	No provision.	An expedited dispute resolution and cause of action are provided if a plan sponsor fails to act; specific rules apply for the treatment of participants not covered by a collective bargaining agreement; the unit credit funding method is used in making certain calculations; and special definitions apply for a plan described in Code section 404(c).
7. Effective date		Plan years beginning after 2005.	Plan years beginning after 2006, but subject to the December 31, 2014, sunset generally applicable to the multiemployer plan provisions of the bill.
C. Measures to Forestall Insolvency of Multiemployer Plans (secs. 203 and 213 of the House bill and sec. 203 of the Senate amendment)	If a multiemployer plan is in reorganization status, the plan sponsor must determine at least every 3 years whether the value of plan assets exceeds 3 times the amount of benefit payments for the year. If the value of plan assets is below the required amount, the plan sponsor must determine whether the plan will be insolvent in the next 3 years.	If the value of plan assets is below the required amount, the plan sponsor must determine whether the plan will be insolvent in the next 5 years. If the plan is expected to be insolvent in the next 5 years, the plan sponsor must make an annual determination of whether the value of plan assets exceeds 3 times the amount of benefit payments for the year.	Same as House bill.

Provision	Present Law	House Bill	Senate Amendment
		Effective date.−Determinations made in plan years beginning after December 31, 2005.	Effective date.−Determinations made in plan years beginning after December 31, 2006, but subject to the December 31, 2014, sunset generally applicable to the multiemployer plan provisions of the bill.
D. Withdrawal Liability Reforms (sec. 204 of the House bill and sec. 205 of the Senate amendment) **1. Repeal of limitation on withdrawal liability in certain cases**	On withdrawal from a multiemployer plan, an employer (and any member of its controlled group) is generally liable for its share of unfunded vested benefits under the plan (referred to as "withdrawal liability"), as determined by the plan sponsor. Limits apply to withdrawal liability in the case of (1) a bona fide sale of all or substantially all of the employer's assets in an arm's length transaction to an unrelated party, and (2) an insolvent employer undergoing liquidation or dissolution.	The limits on withdrawal liability are repealed in the case of (1) a bona fide sale of all or substantially all of the employer's assets in an arm's length transaction to an unrelated party, and (2) an insolvent employer undergoing liquidation or dissolution. Effective date.−Sales occurring on or after January 1, 2006.	The limit on withdrawal liability is repealed in the case of an insolvent employer undergoing liquidation or dissolution. Effective date.−Same as House bill, except for the December 31, 2014, sunset generally applicable to the multiemployer plan provisions of the bill.

Provision	Present Law	House Bill	Senate Amendment
2. Repeal of limitation of withdrawal liability to 20 annual payments	An employer's withdrawal liability is generally paid in annual amounts over the period of years necessary to amortize the liability. However, if the amortization period exceeds 20 years, the employer's liability is generally limited to the first 20 annual payments.	The provision limiting an employer's liability to 20 annual payments is repealed. Effective date.−Withdrawals occurring on or after January 1, 2006.	No provision.
3. Withdrawal liability continues if work contracted out	Withdrawal liability applies in the case of an employer's partial withdrawal from a multiemployer plan, including a partial cessation of the employer's obligation to contribute to the plan. A partial cessation occurs if the employer permanently ceases to have an obligation under 1 or more (but not all) collective bargaining agreements, but (1) continues to perform in the jurisdiction of the bargaining agreement work of the type for which contributions were previously required, or (2) transfers such work to another location.	A partial cessation also occurs if the employer permanently ceases to have an obligation under 1 or more (but not all) collective bargaining agreements, but transfers work of the type for which contributions were previously required to another party or parties. Effective date.−Work transferred on or after date of enactment.	A partial cessation also occurs if the employer permanently ceases to have an obligation under 1 or more (but not all) collective bargaining agreements, but transfers work of the type for which contributions were previously required to an entity or entities owned or controlled by the employer. Effective date.−Same as House bill, except for the December 31, 2014, sunset generally applicable to the multiemployer plan provisions of the bill.

Provision	Present Law	House Bill	Senate Amendment
4. Repeal of special rule for long and short haul trucking industry	Withdrawal liability applies in the case of an employer's complete withdrawal from a multiemployer plan, which generally occurs if the employer permanently ceases (1) operations covered under the plan, or (2) to have an obligation to contribute to the plan. However, in addition, in the case of a plan of employers primarily engaged in the long and short haul trucking industry, the household goods moving industry, or the public warehousing industry, either the PBGC must determine the plan has suffered substantial damage to its contribution base as a result of such cessation, or the employer must fail to provide a surety bond or escrow for 50% of its withdrawal liability.	The additional requirements for a complete withdrawal in the case of a plan of employers primarily engaged in the long and short haul trucking industry, the household goods moving industry, or the public warehousing industry are repealed. Effective date.−Cessations of obligations to contribute and of covered operations occurring on or after January 1, 2006.	No provision.
5. Application of forgiveness rule to plans primarily covering employees in building and construction	Multiemployer plans may generally provide that employers who meet certain requirements (generally limiting the period and amount for which the employer was obligated to contribution to the plan) are not subject to withdrawal liability. However, this rule does not apply to plans primarily covering employees in the building and construction industry.	The rule allowing plans to exempt certain employers from withdrawal liability is extended to plans primarily covering employees in the building and construction industry. Effective date.−Withdrawals occurring on or after January 1, 2006.	Same as House bill. Effective date.−Same as House bill, except for the December 31, 2014, sunset generally applicable to the multiemployer plan provisions of the bill.

Provision	Present Law	House Bill	Senate Amendment
E. Removal of Restrictions with respect to Procedures Applicable to Disputes Involving Withdrawal Liability (sec. 205 of the House bill)	In determining withdrawal liability, a plan sponsor may disregard a transaction if it finds the principal purpose of the transaction was to avoid or evade withdrawal liability. In general, an employer (or controlled group member) must make withdrawal liability payments even if contesting the plan sponsor's determination. However, in the case of withdrawal liability based on certain disregarded transactions occurring before January 1, 1999, withdrawal liability payments do not have to be made before a final decision upholding the plan sponsor's determination.	If a determination of withdrawal liability is based in whole or in part on a plan sponsor's finding that a principal purpose of a transaction occurring at least 5 years (2 years in the case of a small employer) before the employer's withdrawal from the plan was to avoid or evade withdrawal liability and the liability is contested, withdrawal liability payments do not have to be made before a final decision upholding the plan sponsor's determination. An employer is a small employer if (immediately before the transaction) the employer (including all members of its controlled group) employs not more than 500 employees and is required to make plan contributions for not more than 250 employees. <u>Effective date</u>.−Notifications of withdrawal liability on or after date of enactment.	No provision.
F. Special Rule for Certain Benefits Funded under an Agreement Approved by the PBGC (sec. 204 of the Senate amendment)	No provision.	No provision.	In the case of a multiemployer plan that is a party to an agreement approved by the PBGC before June 30, 2005, and meeting certain requirements, certain benefit increases funded pursuant to the agreement are excepted from the changes to the multiemployer plan funding rules under the bill (including the

Provision	Present Law	House Bill	Senate Amendment
			additional funding rules for plans in endangered or critical status) if the plan is funded in compliance with the agreement (or any amendments thereto). Effective date.–Date of enactment, but subject to the December 31, 2014, sunset generally applicable to the multiemployer plan provisions of the bill.
G. Sunset of Multiemployer Plan Funding Provisions (sec. 216 of the Senate amendment)	No provision.	No provision.	Directs the Secretary of Labor, Secretary of Treasury, and Executive Directive of the PBGC, not later than December 31, 2011, to conduct a study of the effect of the amendments made to the multiemployer plan funding and withdrawal liability rules under the bill and report to Congress thereon with recommendations for legislation. Provides that the amendments made to the multiemployer plan funding and withdrawal liability rules under the bill generally do not apply to plan years beginning after December 31, 2014, and generally reinstates present law for such years, **except that funding improvement and rehabilitation plans and amortizations in effect at the time of the sunset continue.**

Provision	Present Law	House Bill	Senate Amendment
H. Transfer of Excess Pension Assets to Multiemployer Health Plans (sec. 222 of the Senate amendment)	Defined benefit plans may provide retiree medical benefits through separate accounts under such plans. In the case of a single-employer plan, if the value of plan assets exceeds the greater of (1) accrued liability, or (2) 125% of current liability, and certain other requirements are met, qualified transfers of excess pension assets may be made to such separate accounts, but not to exceed the amount expected to be paid for retiree medical benefits in the year of the transfer. Such transfers may not be made after December 31, 2013. Qualified transfers of excess pension assets under multiemployer plans are not permitted.	No provision.	Allows qualified transfers of excess pension assets in the case of a multiemployer plan established before January 1, 1954, under an agreement between the Federal government and employee representatives in a certain industry (or a successor plan primarily covering employees in the building and construction industry). <u>Effective date</u>.−Transfers made in taxable years beginning after December 31, 2004.

Provision	Present Law	House Bill	Senate Amendment
III. OTHER PROVISIONS			
A. Interest Rate Assumption for Determination of Lump-Sum Distributions (sec. 302 of the House bill and sec. 301 of the Senate Amendment)	**A lump-sum benefit under a plan is generally the sum of the present values of the payments a participant would be expected to receive under an annuity commencing at normal retirement age.** In determining the minimum value of certain optional forms of benefit, such as a lump sum, present value is calculated using (1) the annual rate of interest on 30-year Treasury securities for the month before distribution (or such other period as provided by regulations), and (2) a mortality table based on the 1994 Group Annuity Reserving Table ("94 GAR"), projected through 2002.	Changes the interest rate used in determining minimum value to 3 segment rates (0-5 years; more than 5 and up to 20 years; and more than 20 years), based on the corresponding portion of a yield curve based on interest rates on investment-grade corporate bonds, with a phase-in over 2007-2010. Changes the mortality table used in determining minimum value to a mortality table based on RP-2000 Mortality Tables, projected to the year of distribution. Effective date.−Plan years beginning after December 31, 2006.	Changes the interest rate used in determining minimum value to interest rates drawn from a yield curve based on interest rates on high-quality corporate bonds **that match the timing of the expected benefit payments under the plan**, with a phase-in over 2007-2009. (Does not change the mortality table used in determining minimum value.) Effective date.−Same as House bill.
B. Interest Rate Assumption for Applying Benefit Limitations to Lump-Sum Distributions (sec. 303 of the House bill and sec. 302 of the Senate amendment)	A dollar limit applies under the Code to the benefits provided under a defined benefit pension plan. In applying the dollar limit to forms of benefit subject to the minimum value rules, the interest rate used must be not less than the greater of (1) the annual interest rate on 30-year Treasury securities (or 5.5% for 2004 and 2005), or (2) the interest rate specified in the plan.	In applying the dollar limit to forms of benefit subject to the minimum value rules, the interest rate used must be not less than the greatest of (1) 5.5%, (2) the interest rate that provides a benefit of not more than 105% of the benefit provided if the interest rates used in determining minimum value were used, or (3) the interest rate specified in the plan. Effective date.−Distributions made in years beginning after December 31, 2005.	In applying the dollar limit to forms of benefit subject to the minimum value rules, the interest rate used must be not less than the greater of (1) 5.5%, or (2) the interest rate specified in the plan. Effective date.−Same as House bill.

Provision	Present Law	House Bill	Senate Amendment
C. Distributions During Working Retirement (sec. 304 of the House bill)	For purposes of ERISA, a pension plan is generally a plan that provides retirement income to employees or results in a deferral of income extending to the termination of covered employment or beyond. A qualified pension plan under the Code generally may not provide for distributions before the attainment of normal retirement age (commonly age 65) to participants who have not separated from employment; **however, under proposed regulations, pension plans may permit participants who are at least age 59-1/2 and have reduced their work schedule by at least 20 percent to receive a pro rata portion of their benefits.**	A pension plan does not fail to provide retirement income under ERISA or to be a qualified plan under the Code solely because the plan permits distributions to an employee who has attained age 62 and has not separated from employment at the time of the distribution. <ins>Effective date</ins>.−Distributions in plan years beginning after December 31, 2005.	No provision.

Provision	Present Law	House Bill	Senate Amendment
D. Other Amendments Relating to Prohibited Transactions (sec. 305 of the House bill and sec. 1341 of the Senate Amendment)			
1. Definition of amount involved	The Code and ERISA prohibit certain transactions between a plan and certain persons with respect to the plan, such as a plan fiduciary, a person providing services to the plan, or an employer with employees covered by the plan. The Code imposes an excise tax on the amount involved in a prohibited transaction at a rate of 15%, increasing to 100% if the transaction is not corrected. Under ERISA, a civil penalty of 5% of the amount involved in a prohibited transaction may be imposed; this civil penalty does not apply to plans qualified under the Code. Also under ERISA, a civil penalty of 20% of the applicable recovery amount is imposed for a violation of ERISA fiduciary duties, but the penalty is reduced by any amount of excise tax paid (or other civil penalty with respect to the transaction). For purposes of these rules, the "amount involved" generally means the greater of (1) the amount of money and the fair market value of the other property given, or (2) the amount of money and the fair market value of other property received by the plan.	Revises the definition of "amount involved" under ERISA so that, in the case of a prohibited transaction that is a principal transaction involving securities or commodities, the amount involved means only the amount received by the disqualified person in excess of the amount such person would have received in an arm's length transaction with an unrelated party. The 5% ERISA civil penalty may be imposed with respect to prohibited transactions involving qualified plans.	No provision.

Provision	Present Law	House Bill	Senate Amendment
2. Exemption for block trading	Present law does not provide a prohibited transaction exemption for block trades.	Provides **ERISA and Code** prohibited transaction exemptions (except for certain fiduciaries **providing investment advice**) for a purchase or sale of securities involving a block trade if **(1) the total interests of all plans of the same employer do not exceed 10% of the and (2) the terms of the transaction are at least as favorable to the plan as in an arm's length transaction**. A block trade is defined as any trade that will be allocated across 2 or more client accounts of a fiduciary.	Same as House bill, except **does not apply the exemption to fiduciaries with control over the investment of the assets involved in the transaction**, **also requires compensation for the transaction to be no more than as in an arm's length transaction with an unrelated party**, and defines block trade as any trade of at least 10,000 shares or with a market value of at least $200,000 that will be allocated across 2 or more unrelated client accounts of a fiduciary.
3. Bonding relief	ERISA generally requires a plan fiduciary and any person handling plan assets to be bonded, generally in an amount between $1,000 and $500,000.	Provides an exception to the ERISA bonding requirement for certain persons (and certain affiliates) subject to regulation under the Securities Exchange Act or the Investment Advisors Act.	Provides an exception to the ERISA bonding requirement for certain brokers and dealers registered under the Securities Exchange Act.

Provision	Present Law	House Bill	Senate Amendment
4. Exemption for electronic communication network or financial markets trading system	Present law does not provide a prohibited transaction exemption for transactions made through an electronic communication network or financial markets trading system, **but such transactions may be permitted if the parties are not known to each other (a "blind" transaction)**.	Provides an ERISA prohibited transaction exemption for transactions involving the purchase and sale of securities, **or other property as provided in regulations**, executed through certain trading systems **regulated by a Federal agency or other government agency as permitted by the Secretary of Labor** that do not take into account the identities of the parties to a transaction, if certain requirements are met.	Same as House bill, except also provides a Code exemption and applies additional requirements for exemption, **including that the trading system involved generally must be regulated by the SEC**.
5. Conforming ERISA's prohibited transaction provision to the Federal Employee Retirement System Act ("FERSA")	Present law does not provide a **general** prohibited transaction exemption for transactions **between plans and service providers** based on whether adequate consideration is provided.	Provides an ERISA prohibited transaction exemption for certain transactions **(such as sales of property, loans, and transfers or use of plan assets) between a plan and a service provider, if** made for adequate consideration as defined in the provision.	No provision.

Provision	Present Law	House Bill	Senate Amendment
6. Relief for foreign exchange transactions	Present law does not provide a prohibited transaction exemption for foreign exchange transactions.	Provides an ERISA prohibited transaction exemption for foreign exchange transactions **between a bank or broker-dealer and a plan for the sale or purchase of securities if the terms of the transaction are at least as favorable to the plan as in an arm's length transaction between unrelated parties (or the terms in comparable arm's length transactions between the bank or broker-dealer and an unrelated party) and the exchange rate is within a certain range.**	Same as House bill, except also provides a Code exemption, **applies also to the holding of securities, and the bank or broker-dealer cannot have investment discretion or provide investment advice with respect to the transaction.**

Provision	Present Law	House Bill	Senate Amendment
7. Definition of plan asset vehicle	Under ERISA regulations, applicable also for purposes of the prohibited transaction rules of the Code, when a plan holds a non-publicly-traded equity interest in an entity, the assets of the entity may be considered plan assets in certain circumstances unless equity participation in the entity by benefit plan investors is not significant. In general, equity participation by benefit plan investors is significant if 25% or more of the value of any class of equity interest **(disregarding certain interests)** is held by benefit plan investors, **defined as** (1) employer-sponsored plans (including those exempt from ERISA, such as governmental plans), (2) other arrangements, such as IRAs, that are subject only to the prohibited transaction rules of the Code, and (3) any entity whose assets are plan assets by reason of a plan's investment in the entity.	**Amends ERISA to define plan assets such that** the assets of an entity are not treated as plan assets if less than 50% of the value of each class of equity interest in the entity (disregarding certain interests) is held by benefit plan investors, which is defined **as** employer-sponsored plans subject to ERISA and plans subject to the prohibited transaction rules of the Code.	No provision.
8. Cross trades study	No provision.	No provision.	Directs the Secretary of Labor, in consultation with the President's Working Group on Financial Markets, to conduct a study on a possible prohibited transaction exemption for active cross trades and to report to the President and the Congress thereon within 2 years of the date of enactment.

Provision	Present Law	House Bill	Senate Amendment
9. GAO study	No provision.	No provision.	Directs the Comptroller General to report to the House Committees on Ways and Means and Education and the Workforce and the Senate Committees on Finance and Health, Education, Labor, and Pensions on the effect of the prohibited transaction provisions of the bill. A preliminary report is due within 2 years of the date of enactment, and a final report is due within 3 years of the date of enactment.
10. Effective date		Generally the date of enactment, except the provision relating to an exemption for electronic communication network transactions is effective 30 days after date of enactment.	Transactions after the date of enactment.

Provision	Present Law	House Bill	Senate Amendment
E. Correction Period for Certain Transactions Involving Securities and Commodities (sec. 306 of the House bill and sec. 1341(e) of the Senate Amendment)	For purposes of the prohibited transaction rules of the Code and ERISA, a transaction involving the sale of securities is considered to occur when the transaction is settled (that is, actual change in ownership of the securities). Present law does not provide a prohibited transaction exemption that is based solely on correction of the transaction. At the end of the last sentence. Under current practice, securities transactions are commonly settled 3 days after the agreement to sell is made, which provides time to correct mistakes prior to the transaction actually occurring.	Amends the **ERISA and the Code** to provide a prohibited transaction exemption for a transaction in connection with the acquisition, holding, or disposition of any security or commodity (subject to certain exceptions) if the transaction is corrected within a certain period, generally within 14 days of the date the fiduciary or other person discovers, or reasonably should have discovered, transaction was a prohibited transaction. Effective date.–Any transaction that a fiduciary or other person discovers, or reasonably should have discovered, after the date of enactment constitutes a prohibited transaction.	Same as House bill, except correction is required within 14 days of the transaction. Effective date.−Transactions after the date of enactment.

Provision	Present Law	House Bill	Senate Amendment
F. Recovery by Reimbursement or Subrogation with Respect to Provided Benefits (sec. 307 of the House bill)	ERISA section 502(a)(3) provides a civil cause of action by a participant, beneficiary, or fiduciary to obtain appropriate equitable relief to enforce the terms of the plan. **In some cases, the terms of a plan may require a plan beneficiary to reimburse the plan for an amount paid by the plan for medical care, if the amount is recovered from a third party. The Supreme Court has held that an action for equitable relief does not include an action to enforce such plan terms when the amount recovered from a third party is not held by the beneficiary.** *Great-West Life & Annuity Insurance Company v. Knudson*, 534 U.S. 204 (2002). The ability of a plan to obtain reimbursement when the beneficiary holds the recovered amount is currently before the Supreme Court. *Mid Atlantic Medical Services, LLC v. Sereboff*, 407 F.3d 212 (4th Cir. 2005), *cert. granted*, 74 U.S.L.W. 3321 (U.S. Nov. 28, 2005) (No. 05-260).	Provides that an action under ERISA section 502(a)(3) includes an action by a fiduciary for recovery of amounts on behalf of the plan enforcing plan terms that provide a right of recovery by reimbursement or subrogation with respect to benefits provided to or for a participant or beneficiary. <u>Effective date</u>.−January 1, 2006.	No provision.

Provision	Present Law	House Bill	Senate Amendment
G. Exercise of Control Over Plan Assets in Connection with Qualified Changes in Investment Options and Inapplicability of Relief from Fiduciary Liability During Suspension of Ability of Participant or Beneficiary to Direct Investments (sec. 308 of the House bill and sec. 706 of the Senate amendment)	Defined contribution plans may permit participants to make investment decisions with respect to their accounts. ERISA fiduciary liability does not apply to investment decisions made by plan participants if participants exercise control over the investment of their individual accounts, as determined under ERISA regulations. In that case, a fiduciary may be responsible for the investment alternatives made available, but not for the specific investment decisions made by participants. The plan administrator of a defined contribution plan must provide participants with advance notice of a blackout period, which includes a period during which participants' ability to direct investments is suspended for more than 3 consecutive business days.	Blackout periods.−No provision.	Blackout periods.−The exception to fiduciary liability when participants exercise control over investments does not apply in connection with a blackout period during which participants' ability to direct investments is suspended. However, a fiduciary that fulfills its fiduciary responsibility in authorizing and implementing the blackout period is not liable for losses occurring during the blackout period as a result of a participant's exercise of control over investments before the blackout period. Within 180 days of enactment, the Secretary of Labor (in consultation with Secretary of Treasury) is directed to issue regulations providing guidance, including safe harbors, for satisfying fiduciary responsibilities during a blackout period in which the right to direct investments is suspended.
		Changes in investment options.−A participant is not treated as not exercising control over the assets in his or her account if, in connection with a change in investment options offered under the plan, a participant's account is reallocated to new investment options that have	Changes in investment options.−In the case of a blackout period in connection with a change in the investment options offered under a plan, a participant is deemed to have exercised control over the assets in his or her account before the blackout period if, after the participant is given

Provision	Present Law	House Bill	Senate Amendment
		reasonably similar characteristics to the previous investment options chosen by the participant, provided that (1) the plan administrator provides the participant advance notice and information about the change, and (2) the participant has not provided affirmative investment instructions contrary to the change. Effective date.−Changes in investment options taking effect on or after January 1, 2006.	notice of the change in investment options, the assets in the participant's account are transferred (1) to other options in accordance with the participant's affirmative election, or (2) in the absence of such an election and if fiduciary relief applied for prior investment options, to options in the manner set forth in the notice. Effective date.−Plan years beginning after December 31, 2005, with a delayed effective date for collectively bargained plans.

Provision	Present Law	House Bill	Senate Amendment
H. Clarification of Fiduciary Rules (sec. 309 of the House bill and sec. 1110 of the Senate amendment)	ERISA imposes standards on the conduct of plan fiduciaries. Fiduciaries are personally liable for any losses **to the plan** due to a violation of fiduciary standards. **In addition, a participant may bring an action for equitable relief to redress a violation of fiduciary standards.** **An ERISA interpretive bulletin** requires a fiduciary choosing an annuity provider for purposes of distributions from a plan (whether on separation or retirement of a participant or on termination of the plan) to take steps calculated to obtain the safest available annuity, **based on the annuity provider's claims paying ability and creditworthiness,** unless under the circumstances it would be in the interest of participants to do otherwise.	Directs the Secretary of Labor to issue final regulations within 1 year of enactment, clarifying that the selection of an annuity contract as an optional form of distribution from a defined contribution plan is (1) not subject to the safest available annuity requirement under the **ERISA interpretive bulletin**, and (2) subject to all otherwise applicable fiduciary standards. Effective date.–Date of enactment.	Same as House bill. **Effective date.–Same as House bill**.

Provision	Present Law	House Bill	Senate Amendment
I. GAO Pension Funding Report (sec. 310 of the House bill)	No provision.	Requires the Comptroller General to transmit a pension funding report to Congress not later than 1 year after date of enactment, including an analysis of (1) requiring a pension plan to insure a portion of the plan's total investments, (2) requiring a pension plan to adhere to uniform solvency standards set by the PBGC, similar to those applied at the State level to the insurance industry, and (3) amortizing a single-employer defined benefit pension plan's shortfall amortization base over various periods not exceeding 7 years. Effective date.−Date of enactment.	No provision.

Provision	Present Law	House Bill	Senate Amendment
IV. IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS **A. Increases in PBGC Premiums (sec. 401 of the House bill and secs. 121 and 401 of the Senate amendment)** **1. Flat-rate premiums**	Single-employer plans are subject to an annual flat-rate premium of $19 per participant **for plan years beginning before 2006**. Under the Deficit Reduction Act of 2005, Pub. L. No. 109-171, enacted after passage of H.R. 2830 and S.1783, for plan years beginning after 2005, the flat-rate premium is increased to $30, with indexing after 2006 based on increases in average wages.	In general, the flat-rate premium for single-employer plans is $21.20 in 2006, $23.40 in 2007, $25.60 in 2008, $27.80 in 2009 and, in 2010 and thereafter, $30 as adjusted after 2006 for increases in average wages. For plans with a funding target percentage of less than 80% for the preceding year, the premium is $22.67 in 2006, $26.33 in 2007 and, in 2008 and thereafter, $30 as adjusted after 2006 for increases in average wages. <u>Effective date</u>.−Plan years beginning after 2005.	The flat-rate premium is $30 in 2006, with indexing thereafter based on increases in average wages. Beginning in 2011 and every five years thereafter, the PBGC is to report to the Congress regarding recommendations for adjusting the flat-rate premium. <u>Effective date</u>.−Same as House bill.
2. Variable-rate premiums	The variable-rate premium is $9 per $1,000 of unfunded vested benefits. A specified interest rate is used to determine the amount of unfunded vested benefits. For years beginning in 2004 and 2005, the specified rate is 85 percent of the long-term corporate bond rate.	For 2006, the interest rate used in 2004 and 2005 continues to apply. Beginning in 2007, the determination of unfunded vested benefits is modified to conform to the funding rules in the bill.	For 2006, same as the House bill. Beginning in 2007, the variable-rate premium applies to **all** unfunded benefits, not only unfunded vested benefits, and the definition of unfunded benefits is modified to conform to the funding rules in the bill.

Provision	Present Law	House Bill	Senate Amendment
		Effective date.−Plan years beginning after 2005.	Effective date.−Same as House bill.
3. Termination premiums	Under the Deficit Reduction Act of 2005 Pub. L. No. 109-171, enacted after passage of H.R. 2830 and S.1783, a new premium generally applies in the case of certain plan terminations occurring after 2005 and before 2011. A premium of $1,250 per participant is imposed generally for the year of the termination and each of the following 2 years. The premium applies in the case of a plan termination by the PBGC or a distress termination due to reorganization in bankruptcy, the inability of the employer to pay its debts when due, or a determination that a termination is necessary to avoid unreasonably burdensome pension costs caused solely by a decline in the workforce. In the case of a termination due to reorganization, the liability for the premium does not arise until the employer is discharged from the reorganization proceeding. The premium does not apply with respect to a plan terminated during bankruptcy reorganization proceedings pursuant to a bankruptcy filing before October 18, 2005.	In the case of certain plan terminations, a premium of $1,250 per participant is imposed generally for the year of the termination and each of the following 2 years. The premium applies in the case of a plan termination by the PBGC or a distress termination due to reorganization in bankruptcy, the inability of the employer to pay its debts when due, or a determination that a termination is necessary to avoid unreasonably burdensome pension costs caused solely by a decline in the workforce. In the case of a termination due to reorganization, the liability for the premium does not arise until the employer is discharged from the reorganization proceeding. Effective date.−Reorganization proceedings begun after October 26, 2005.	No provision.

Provision	Present Law	House Bill	Senate Amendment
B. Alternative Funding Agreements (sec. 402 of the Senate amendment)	**The IRS may grant a funding waiver or an extension of the amortization period for unfunded liabilities and losses if it determines that certain requirements are met. In the case of a single-employer plan, no more than 3 funding waivers may be granted for any 15 consecutive years.**	No provision.	The PBGC may request that the Treasury Secretary enter into an alternative funding agreement with a plan sponsor if the plan meets the requirements for a distress termination, may be subject to a distress or involuntary termination within 6 months, or a plan sponsor or other person asks for an agreement and the plan may be subject to a distress or involuntary termination within 2 years. The Treasury Secretary is authorized to enter into such an agreement if, among other requirements, the agreement is in the best interests of participants and beneficiaries and provides for an additional amortization schedule for a period not to exceed 10 years. Restrictions on **future accruals and** maintenance of a successor to a plan subject to an alternative funding agreement may apply, **and an employer may be required to provide security or other collateral**. Effective date.–Date of enactment.

Provision	Present Law	House Bill	Senate Amendment
C. Special Funding Rules for Plans Maintained by Commercial Airlines (sec. 403 of the Senate amendment)	Defined benefit plans maintained by commercial airlines are subject to the minimum funding rules. The minimum required contribution is the amount needed to balance cumulative charges (e.g., for normal cost and to amortize past service liabilities, losses, and funding waivers) and credits (e.g., to amortize decreases in past service liabilities and gains) to the funding standard account. Amortization periods for single-employer plans are generally 5 or 10 years (30 years in the case of past service liabilities). In addition, for single-employer plans covering more than 100 participants and, in general, having a funded current liability percentage of less than 90%, an additional deficit reduction contribution ("DRC") may be required, consisting of the sum of: (1) the expected increase in current liability for benefits accruing in the current year; and (2) a percentage of unfunded current liability, ranging from 18% to 30%, depending on the funded status of the plan. Special statutory interest rate and mortality assumptions apply in determining current liability.	No provision.	In the case of a single-employer plan maintained by a commercial passenger airline, in lieu of the otherwise applicable funding rules, an employer may elect to determine required contributions as the amount needed to fund the plan's unfunded liability over 20 years, provided that, in general, the plan provides for no additional benefit accruals (or any future accruals or benefit increases are immediately funded**, determined using certain statutory assumptions**). For this purpose, unfunded liability is determined under the unit credit funding method, using the plan's interest and mortality assumptions (rather than statutory assumptions). **Under a special rule, in the case of certain plan spinoffs occurring before enactment, the required contribution is determined as if the plans are a single plan and the employer may: (1) allocate the required contribution between the plans, and (2) reallocate contributions between the plans.** If a plan is terminated while an election under the provision is in effect, the first day of the first plan year for which an election was effective is treated as the termination date for certain purposes, including the amount of benefits guaranteed by the PBGC **(except if a plan**

Provision	Present Law	House Bill	Senate Amendment
	Within limits, the PBGC guarantees benefits if a plan terminates without sufficient assets to pay all benefits due under the plan. The amount of benefits guaranteed by the PBGC is determined as of the date of plan termination. In applying the minimum coverage rules to a plan maintained pursuant to a collective bargaining agreement, participants who are not covered by the collective bargaining agreement are treated as covered under a separate plan.		**provides future accruals or benefit increases that are immediately funded)**. Before the PBGC may initiate termination proceedings with respect to a plan covered by an election, it must determine whether an alternative funding agreement would make plan termination unnecessary and, if so, take all actions needed to ensure an alternative funding agreement is entered into. Certain management pilots are treated as covered by a collective bargaining agreement for purposes of the minimum coverage rules. Effective date.−Generally, plan years ending after the date of enactment.
D. Limitation on PBGC Guarantee of Shutdown and Other Benefits (sec. 404 of the Senate amendment)	In the case of a plan amendment **that increases benefits and** has been in effect for less than 5 years before plan termination, the otherwise PBGC guarantee is phased in by 20 percent per year.	No provision. **(However, under secs. 103 and 113 of the House bill, plan shutdown and other unpredictable contingent event benefits may not be provided if a plan is less than 80% funded, or would be less than 80% funded taking into account the benefits, unless the employer contributes a certain amount in addition to any required contribution.)**	If a benefit is payable by reason of a plant shutdown or similar event or any event other than attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability, the 5-year phase in of the PBGC guarantee applies as if a plan amendment were adopted on the date the event occurred. Effective date.−Benefits that become payable by reason of an event occurring after July 26, 2005.

Provision	Present Law	House Bill	Senate Amendment
E. Rules Relating to Bankruptcy of the Employer (sec. 405 of the Senate amendment)	The amount of guaranteed benefits payable by the PBGC **(including application of the 5-year phase-in for plan amendments increasing benefits and the priority for allocating assets to types of benefits)** is determined as of the date of plan termination.	No provision.	If a plan is terminated while a plan sponsor is in bankruptcy, **certain aspects of the PBGC guarantee, such as the guarantee amount and the application of the 5-year phase-in, as well as the priority for allocating plan assets to types of benefits,** are determined as of the date the sponsor entered bankrupty. <u>Effective date</u>.−Bankruptcy proceedings initiated on or after the date that is 30 days after enactment.
F. Flat-Rate Premiums for New Plans of Small Employers (sec. 406 of the Senate amendment)	New plans of small employers are subject to the same flat-rate premium (described above) as other plans.	No provision.	The flat-rate premium for new plans of employers with 100 or fewer employees is $5 per participant for each of the first 5 years the plan is in effect. <u>Effective date</u>.−Plans first effective after 2005.

Provision	Present Law	House Bill	Senate Amendment
G. Variable-Rate Premiums for Small and New Plans (sec. 407 of the Senate amendment)	Small and new plans are subject to the same variable-rate premium (described above) as other plans.	No provision.	The otherwise applicable variable-rate premium is phased in ratably over a six-year period for new defined benefit plans (starting with 0% in the first year, and 20% each year thereafter). The **per-participant** variable-rate premium for plans of employers with 25 or fewer employees is limited to \$5 multiplied by the number of plan participants. Effective date.−The provision for new plans is effective for plans first effective after 2005. The provision for small plans is effective for years beginning after 2005.
H. Authorization for PBGC to Pay Interest on Premium Overpayment Refunds (sec. 408 of the Senate amendment)	The PBGC charges interest on underpayments of premiums, but is not authorized to pay interest on overpayments.	No provision.	PBGC is authorized to pay interest on overpayments of premiums, calculated in the same manner as interest on underpayments. Effective date.−Interest for periods beginning on or after the date of enactment.

Provision	Present Law	House Bill	Senate Amendment
I. Rules for Substantial Owner Benefits in Terminated Plans (sec. 409 of the Senate amendment)	In general, PBGC guaranteed benefits are phased in over 5 years from the date a plan (or plan amendment) is adopted. In the case of someone owning more than a 10-percent ownership interest in the employer (a "substantial owner"), the guarantee is phased in over 30 years. Special asset allocation rules also apply to substantial owners.	No provision.	The 5-year phase in of guaranteed benefits applies to substantial owners with less than a 50 percent ownership interest. In the case of a substantial owner with a 50 percent or more interest (a "majority owner") the phase in occurs over 10 years. A majority owner's benefit cannot be more than the amount phased in over 5 years for other participants. The general rules for asset allocations apply to substantial owners who are not majority owners. Effective date.−Plan terminations with respect to which notice is provided or proceedings are initiated by the PBGC after 2005.

Provision	Present Law	House Bill	Senate Amendment
J. Acceleration of PBGC Computation of Benefits Attributable to Recoveries from Employers (sec. 410 of the Senate amendment)	If an underfunded plan terminates, the employer is liable to the PBGC for unfunded liabilities and contributions owed to the plan. Any recoveries from employers **for unfunded liabilities** are allocated partly to the PBGC (to help cover guaranteed benefits) and to plan participants. The amount allocated to participants is based on a recovery ratio determined using PGBC actual recovery experience from plans terminating within the 5-fiscal year period before the year of the notice of intent to terminate. In the case of a very large plan (a plan for which participant losses exceed $20 million), actual recovery amounts for the plan are used. **Amounts recovered for contributions owed to the plan are allocated are determined on a plan-specific basis (rather than on historical average recoveries) and are allocated to plan benefits in the same manner as other assets.**	No provision.	The time period for determining the recovery ratio **for unfunded benefits** is modified so that the 5-year period starts 2 years earlier, **and a recovery ratio is created for determining amounts recovered for contributions owed to the plan, based on the PBGC's recovery experience over the same five-year period**. <u>Effective date</u>.−Plan terminations for which notice is provided or proceedings are initiated by the PBGC on or after the date that is 30 days after the date of enactment.

Provision	Present Law	House Bill	Senate Amendment
K. Treatment of Certain Plans Where There is a Cessation or Change in Membership of a Controlled Group (sec. 411 of the Senate amendment)	Generally, if a defined benefit plan is terminated, the employer must make additional contributions in the amount needed to assure that plan assets are sufficient to cover benefit liabilities under the plan. Benefit liabilities for this purpose **are determined as** the present value of all benefits due under the plan (referred to as "termination liability"). This present value is determined using interest and mortality assumptions prescribed by the PBGC.	No provision.	Subject to certain requirements, the statutory interest rate used under the funding rules is also used in determining termination liability of a fully funded plan maintained by an employer that changes controlled group membership as a result of a transaction or series of transactions and which the PBGC treats as a plan termination. Effective date.−Any transaction or series of transactions occurring on or after enactment.
L. Effect of Title (sec. 412 of the Senate amendment)	**The Deficit Reduction Act of 2005 Pub. L. No. 109-171, enacted after passage of H.R. 2830 and S.1783, increases flat-rate premiums for single-employer and multiemployer plans for plan years beginning after 2005 and creates a new premium in the case of certain plan terminations after 2005.**	No provision.	Provides that decreases in Federal outlays as a result of changes in the PBGC provisions of the bill shall be treated as in lieu of Federal outlay decreases resulting from amendments to the PBGC provisions of ERISA under the budget reconciliation bill for fiscal year 2006. Effective date.−Date of enactment.

Provision	Present Law	House Bill	Senate Amendment
M. Age Requirement for Airline Pilots (sec. 413 of the Senate amendment)	The amount of benefits guaranteed by the PBGC under a single employer plan and the overall benefits guaranteed in the event an individual receives benefits from the PBGC due to more than one plan are limited to the actuarial equivalent of a life annuity beginning at age 65.	No provision.	**If, at the time of plan termination, FAA regulations require airline pilots to separate from service before age 65, the limit on guaranteed benefits for pilots is determined by substituting the FAA-required age (currently age 60) for age 65.** Effective date.−Benefits payable on or after the date of enactment.

Provision	Present Law	House Bill	Senate Amendment
V. DISCLOSURE **A. Defined Benefit Plan Funding (or "90-day") Notices (sec. 501 of the House bill and sec. 501 of the Senate amendment)**	The plan administrator of a multiemployer defined benefit pension plan must provide an annual funding notice to participants, labor organizations representing such participants, employers having an obligation to contribute under the plan, and the PBGC. The notice must include certain information, including information relating to the funded status of the plan. Notice generally must be provided **within 9 months after the end of the plan year or, if an extension to file the plan's annual report applies, within 2 months after the end of the extension. The administrator of a single-employer plan subject to PBGC variable-rate premiums must provide participants with notice of the plan's funded status and the PBGC guarantee limit if a plan terminates on an underfunded basis.**	Extends the funding notice requirement to single-employer defined benefit pension plans; requires additional information to be provided by each type of plan, **including the ratio of inactive to active participants and the projected funded status for the year in which the notice is provided**; requires notice to be provided no later than 90 days after the end of the plan year; and requires the Secretary of Labor to publish a model notice no later than 180 days after date of enactment. <u>Effective date</u>.−Plan years beginning after December 31, 2005.	Same as House bill, except (1) contains some differences in the information required to be provided by each type of plan (such as **funded status for the 2 previous years, funded status determined on the basis of the fair market value of assets and current interest rates,** information on increases in liabilities as a result of benefit increases and, in the case of a multiemployer plan, information relating to endangered or critical status), (2) provides a later due date for plans covering 100 or fewer participants, **and (3) incorporates the information required to be provided in the notice required under present law with respect to a single-employer plan subject to PBGC variable-rate premiums and eliminates the separate notice requirement under present law.** <u>Effective date</u>.−Same as House bill.

Provision	Present Law	House Bill	Senate Amendment
B. Additional Disclosure Requirements (sec. 502 of the House bill and secs. 502-504 of the Senate amendment)	Annual report.−The plan administrator of a pension plan generally must file an annual report including certain information about the plan. The annual report is generally due **within 210 days after the end of the plan year; under regulations, an automatic extension of up to 2-1/2 months (to approximately 285 days after the end of the plan year) may apply. No further extension is available in the case of hardship.**	Annual report.−Requires certain additional information to be provided in the annual report of a defined benefit pension plan, depending on whether it is a single-employer or multiemployer plans and requires certain information to be provided in electronic format for Internet display by the Secretary of Labor. Allows the Secretary of Labor to extend the due date for the annual report beyond 285 days after the end of the plan year **only on a case-by-case basis** and only in the case of hardship.	Annual report.−Same as House bill, except some differences in the additional information required to be provided.

Provision	Present Law	House Bill	Senate Amendment
	Summary annual report.−A plan administrator must provide a summary of the annual report to participants within 2 months after the due date of the annual report. **PBGC multiemployer plan study.-- The PBGC is required to conduct a study every 5 years relating to multiemployer plan premiums and guarantee levels and report to the House Committees on Ways and Means and Education and the Workforce and the Senate Committees on Finance and Health, Education, Labor, and Pensions.**	Summary annual report.−Requires certain additional information to be included in the summary annual report and requires the summary annual report to be provided within 15 business days of the due date of the annual report. Multiemployer plan information on request.−Requires actuarial and financial reports prepared for a multiemployer plan to be provided to participants and contributing employers on request. Requires the plan administrator to provide withdrawal liability and certain other information to a contributing employer on request. **New multiemployer plan notice.-- No provision.**	Summary annual report.−Requires the summary annual report to be provided within 30 days of the due date of the annual return; allows the requirement to be met by display on the Internet if the summary annual report is provided within 30 days of display. Multiemployer plan information on request.−Same as House bill. **New multiemployer plan notice**.--Requires certain plan information to be provided to contributing employers and employee organizations representing participants within 30 days of the filing of the annual report for the plan. **PBGC multiemployer plan study.--** Requires the PBGC, within 5 years of date of enactment and at least every 5 years thereafter, to report to Congress on the fiscal condition of the multiemployer plan system.

Provision	Present Law	House Bill	Senate Amendment
		Effective date.–Plan years beginning after December 31, 2005.	Effective date.–Same as House bill, except effective for plan years beginning after December 31, 2007, in the case of certain information required to be provided in the annual report of a multiemployer plan.
C. Section 4010 Filings with the PBGC (sec. 503 of the House bill and sec. 505 of the Senate amendment)	Certain controlled group financial information and plan actuarial information must be reported annually to the PBGC (referred to as "section 4010 reporting") if, in the aggregate, unfunded vested benefits under single-employer defined benefit pension plans maintained by controlled group members exceed $50 million (or certain other circumstances apply). Section 4010 information provided to the PBGC **generally may not be disclosed** to the public, **and it is excepted from disclosure under the Freedom of Information Act**.	Requires section 4010 reporting if, instead of unfunded vested benefits exceeding $50 million, (1) in the aggregate, single-employer defined benefit pension plans maintained by controlled group members are less than 60 percent funded, or (2) in the aggregate, plans maintained by controlled group members are less than 75 percent funded and the plan sponsor is in an industry with respect to which the PBGC determines that there is substantial unemployment or underemployment and the sales and profits are depressed or declining. Requires notice of section 4010 reporting and certain plan information to be provided to plan participants and to the House Committees on Ways and Means and Education and the Workforce and the Senate Committees on Finance and Health, Education, Labor, and Pensions. **(The prohibition on public disclosure continues to apply.)** Effective date.–Plan years beginning after December 31, 2006.	Same as House bill, except (1) retains present law reporting requirement if unfunded vested benefits exceed $50 million, **but only if, in the aggregate, single-employer defined benefit pension plans maintained by controlled group members are less than 90 percent funded or a below-investment-grade rating applies to the employer or a bond issued by the employer; (2) requires additional information to be provided;** and (3) does not require notice **or information** to be provided to plan participants **and requires a summary report of the information provided to the PBGC to be provided to House Committee on Education and the Workforce and the Senate Committee on Health, Education, Labor, and Pensions**. Effective date.–Same as House bill.

Provision	Present Law	House Bill	Senate Amendment
D. Disclosure of Termination Information to Plan Participants (sec. 506 of the Senate amendment)	Distress terminations.–A single-employer defined benefit pension plan with assets insufficient to provide all the benefits due under the plan may be terminated by the employer only if certain criteria relating to financial distress are met. The plan administrator must provide 60 days advance notice of a proposed distress termination to affected parties (i.e., participants, any employee organization representing participants, and the PBGC). In addition, certain information relating to the need for a distress termination must be provided to the PBGC. Involuntary terminations.–The PBGC may initiate termination of a single-employer defined benefit pension plan in certain circumstances after issuing notice thereof to the plan administrator.	No provision.	Distress terminations.– Generally requires information (other than certain confidential information) provided to the PBGC relating to the need for a distress termination to be provided to participants and any employee organization representing participants within 15 days after a request for the information. Involuntary terminations.– Generally requires (1) a plan sponsor or administrator to provide participants and any employee organization with any information (other than certain confidential information) provided to the PBGC in connection with an involuntary termination, and (2) the PBGC to provide participants and any employee organization with a copy of the administrative record relating to an involuntary termination. Effective date.–Plan terminations with respect to which notice of intent to terminate, or the PBGC's determination of involuntary termination, occurs after date of enactment.

Provision	Present Law	House Bill	Senate Amendment
E. Benefit Suspension Notice (sec. 507 of the Senate amendment)	Payment of benefits to a participant may be suspended if (1) a participant in pay status returns to employment with the employer maintaining the plan, or (2) a participant who attains normal retirement age continues in employment. Such suspension of benefits is permitted only if a notice including certain information is provided to the participant. Under DOL regulations, the notice is to be provided during the first calendar month or payroll period in which benefits are suspended. The notice must include the relevant plan provisions.	No provision.	Directs the Secretary of Labor to modify the benefit suspension regulations to provide that: (1) in the case of a participant in pay status who returns to work, the notice is to be provided in the first calendar month or during the first 4-5 week payroll period in which benefits are suspended, (2) in other cases, the notice is to be provided in the summary description of the plan, and (3) the notice need not include the relevant plan provisions. Effective date.−The modifications to the rules apply to plan years beginning after December 31, 2005.
F. Study and Report by GAO (sec. 508 of the Senate amendment)	No provision.	No provision.	Directs the Comptroller General to conduct a study and report to Congress within 6 months of date of enactment on the effectiveness of the enforcement provisions of ERISA and other Federal laws in protecting pension plan participants and assets. Effective date.−Date of enactment.

Provision	Present Law	House Bill	Senate Amendment
VI. INVESTMENT ADVICE (SECS. 601-602 OF THE HOUSE BILL AND SEC. 802 OF THE SENATE AMENDMENT)	The Code and ERISA prohibit certain transactions between a plan and disqualified persons with respect to the plan, such as a plan fiduciary, a person providing services to the plan, or an employer with employees covered by the plan. Certain transactions are specifically exempted from prohibited transaction treatment. ERISA imposes standards on the conduct of plan fiduciaries, including persons who make investment decisions with respect to plan assets. Fiduciaries are personally liable for any losses **to the plan** due to a violation of fiduciary standards. **In addition, a participant may bring an action for equitable relief to redress a violation of fiduciary standards**. An individual account plan may permit participants to make investment decisions with respect to their accounts. ERISA fiduciary liability does not apply to investment decisions made by plan participants if participants control the investment of their individual accounts, **as determined under ERISA regulations. In that case,** a plan fiduciary may be responsible for the investment alternatives made available, but not for the specific	Prohibited transaction exemption.−In the case of an individual account plan under which participants direct the investment of assets, exemptions from prohibited transaction treatment apply under **ERISA and the Code** in connection with (1) investment advice provided to the plan or a participant by a fiduciary adviser, (2) investments made pursuant to that advice, and (3) fees received for the advice or investments, if certain disclosures are made and other requirements are met. Fiduciary rules.−An employer or fiduciary under ERISA is not subject to fiduciary liability solely because of investment advice provided by a fiduciary adviser that satisfies the requirements for the prohibited transaction exemption. The provision does not exempt a plan fiduciary from fiduciary responsibility for the prudent selection and periodic review of a fiduciary adviser. Plan assets may be used to pay reasonable expenses for investment advice provided by a fiduciary adviser.	Prohibited transaction exemption.−No provision. Fiduciary rules.−In the case of an individual account plan that permits participants to direct the investment of assets in their accounts, procedures are provided under which an employer or fiduciary is deemed to satisfy its fiduciary duty with respect to the prudent designation and periodic review of a qualified investment adviser to provide investment advice to participants. The plan sponsor or other fiduciary is not liable for any loss or breach with respect to investment advice provided to a participant by a qualified investment adviser. A qualified investment adviser is deemed to be a fiduciary with respect to the provision of investment advice to participants.

Provision	Present Law	House Bill	Senate Amendment
	investment decisions made by participants.	Effective date.−Advice provided on or after January 1, 2006.	Effective date.−Investment advisers designated after date of enactment.

Provision	Present Law	House Bill	Senate Amendment
VII. BENEFIT ACCRUAL STANDARDS; CASH BALANCE AND OTHER HYBRID DEFINED BENEFIT PLANS			
A. Prohibition on the Reduction in the Rate of Benefit Accrual on Account of Age (sec. 701(a)(1) and (b)(1) of the House bill and sec. 601(a) of the Senate amendment)	Under the Code, ERISA, and ADEA, a defined benefit plan may not provide that benefit accruals cease or that the rate of benefit accruals is reduced because of the attainment of any age (this requirement is referred to as the prohibition on age discrimination). This requirement is not violated merely because the plan imposes (without regard to age) a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or participation which are taken into account under the plan. Courts have made various interpretations of these rules as applied to particular plans.	<u>In general</u>.−Amends **ERISA and the Code** to provide a method, applicable to all defined benefit plans, of satisfying the prohibition on age discrimination. <u>Determination based on entire accrued benefit</u>.−A defined benefit plan does not violate the prohibition on age discrimination if a participant's entire accrued benefit, determined as of any date, would be equal to or greater than that of any similarly situated, younger individual.	<u>In general</u>.−Amends **ERISA, ADEA, and the Code** to provide rules for cash balance and other hybrid plans. <u>Rules for cash balance plans</u>.−A qualified cash balance plan does not violate the age discrimination rules merely because it may reasonably be expected that the period over which interest credits will be made is longer for a younger participants. This rule does not apply if the rate of any pay credit or interest credit decreases by reason of the participant's attainment of any age. A cash balance plan is a defined benefit plan under which the accrued benefit is determined by reference to the balance of a hypothetical accumulation account to which pay and interest credits are credited. The term cash balance plan includes other plans with a similar effect as provided by the Treasury Secretary.

Provision	Present Law	House Bill	Senate Amendment
		For this purpose, the subsidized portion of any early retirement benefit, including any early retirement subsidy, that is fully or partially included or reflected in an employee's opening balance or other transition benefits, is disregarded. The entire accrued benefit may be expressed as the present value of accrued benefits projected to normal retirement age, a hypothetical account balance, or the current value of the accumulated percentage of the employee's final average pay. The provision is intended to apply to hybrid plans, including pension equity plans. Plans do not violate the prohibition on age discrimination solely because the plan provides: • that benefits are offset by all or a portion (including an estimate) of Social Security or Railroad Retirement benefits; benefits under another qualified plan of the same employer; or benefits under a retirement program for officers or employees of the Federal or State government; or such other arrangements as the Treasury Secretary may provide; • for permitted disparity in contributions or benefits; or • for indexing of benefits.	A qualified cash balance plan meets certain requirements with respect to vesting and interest credits. A qualified cash balance plan must provide that benefits vest at least as rapidly as under 3-year cliff vesting. A qualified cash balance plan must provide that interest credits (or equivalent amount) are (1) not less than the applicable Federal mid-term rate and (2) not greater than **the greater of** such rate or a rate equal to the rate of interest on amounts invested conservatively in long-term investment grade corporate bonds (as determined by the Treasury Secretary). If a qualified cash balance plan using a variable interest rate terminates, the interest rate used to determine accrued benefits is the average of the interest rates used under the plan over the last 5 years.

Provision	Present Law	House Bill	Senate Amendment
B. Rules for Converted Plans (secs. 601(b) and 602 of the Senate amendment)	**Under the Code and ERISA, a qualified retirement plan may not decrease the accrued benefit of a plan participant (referred to as the "anticutback" rule). For purposes of the anticutback rule, an amendment is also treated as reducing an accrued benefit if, with respect to benefits accrued before the amendment is adopted, the amendment has the effect of either (1) eliminating or reducing an early retirement benefit or a retirement-type subsidy, or (2) except as provided by Treasury regulations, eliminating an optional form of benefit.**	No special rules.	In general.−A plan that is converted into a cash balance plan is treated as violating **ERISA and Code anticutback** rules unless the conversion is to a qualified cash balance plan and benefits are determined under one of three methods: (1) "no wearaway"; (2) participant election; and (3) other methods as prescribed by the Secretary. The method used must be specified in the plan and applied uniformly to participants. Similar rules apply to early retirement benefits or retirement-type subsidies. If the plan provides participants with an election, notice requirements apply and, if during the first 5 years a participant election is in effect there is a significant reduction in the rate of future benefit accrual, the accrued benefit of the participant is determined as if the participant had made the election which results in the greatest accrued benefit. No wearaway approach.−(1) The accrued benefit of a participant is the sum of the accrued benefit for (a) years of service under the plan before the amendment, plus (b) years of service under the plan after the amendment. Under (b), the benefits

Provision	Present Law	House Bill	Senate Amendment
			must meet one of the following requirements: (i) the accrued benefit for all participants for the first 5 years after conversion is the greater of the benefit under the old and new formulas, or (ii) for each participant over age 40 with combined age and service of not less than 55, the benefit is determined under the old or new formula as elected by the participant. Participant election.−The plan provides that either (1) the accrued benefit is the greater of the old formula or the new formula, or (2) participants may elect at the time of conversion which formula to apply. Other methods prescribed the by the Treasury Secretary.−The accrued benefit is determined under regulations that provide for additional credits or increases in initial account balances to have an equivalent effect to the other methods. Mergers and acquisitions.−Directs the Secretary of Treasury, within 12 months of date of enactment, to prescribe rules for cases where a cash balance plan conversion is made with respect to a group of employees affected by a merger, acquisition, or similar transaction.

Provision	Present Law	House Bill	Senate Amendment
			Adjustments for subsidized benefits.--If any early retirement benefit or retirement type subsidy is not included in the initial account balance, it must be credited when the participant retires if the participant has met the age, years of service and other requirements for the benefit or subsidy. Notice of election.--Participants must be given notice and other information relating to their right to elect between benefit formulas.

Provision	Present Law	House Bill	Senate Amendment
C. Calculating Minimum Lump-Sum Distributions Under Hybrid Plans (secs. 701(a)(2) and 701(b)(2) of the House bill and sec. 601(c) of the Senate amendment)	Proposed guidance issued by the IRS in 1996 and some case law provide that a lump-sum distribution under a cash balance plan cannot be less than the present value of the benefit payable at normal retirement age, determined using the statutory interest and mortality assumptions. Final regulations have not been issued.	A defined benefit pension plan under which the accrued benefit payable upon distribution is expressed as the balance of a hypothetical account maintained for the participant is not treated as violating the minimum present value rules solely because of the amount actually made available for distribution under the plan, if the applicable interest rate that would be used under the terms of the plan to project the amount of the participant's account balance to normal retirement age is not greater than a market rate of return. The Secretary of the Treasury is given regulatory authority relating to: (1) the calculation of a market rate of return for this purpose; and (2) permissible methods of crediting interest to the account (including variable interest rates) resulting in effective rates of return not greater than a market rate of return.	Except as provided in regulations, in the case of a qualified cash balance plan (as defined above) the present value of the accrued benefit is equal to the balance in the participant's accumulation account (or its equivalent) as of the time the present value determination is being made.
D. Effective Date		Periods beginning on or after June 29, 2005. Legislative history provides that no inference is intended that hybrid plans are illegal under present law.	The provisions relating to application of the age discrimination rules and the calculation of lump-sum distributions apply to periods after July 31, 2005. In the case of a plan in existence on July 31, 2005, the rules relating to vesting and interest credits apply to years beginning after December 31, 2006, unless the plan sponsor elects

Provision	Present Law	House Bill	Senate Amendment
			the application of such requirement for any period after July 31, 2005, and before the first year beginning after December 31, 2006. The rules relating to converted plans apply to plan amendments adopted and taking effect after July 31, 2005, except that a plan sponsor may elect to have such amendments apply to plan amendments adopted before and taking effect after such date. The statute provides that no inference is intended as to the proper treatment of cash balance plans or conversions prior to the effective date.

Provision	Present Law	House Bill	Senate Amendment
VIII. DEDUCTION LIMITATIONS **A. Deduction Limits for Contributions to Single-Employer Defined Benefit Plans (sec. 801 of the House bill and secs. 114 and 122 of the Senate amendment)**	An employer generally may deduct the greater of (1) the required contribution under the funding rules, and (2) the sum of the plan's normal cost and the amount needed to amortize certain unfunded liabilities over 10 years, but not more than the full funding limitation. In no case is the limit less than the amount of the plan's unfunded current liability (i.e., the excess of the plan's current liability over the value of plan assets). **Future increases in the compensation and benefit limits applicable to qualified retirement plans may not be taken into account in applying the deduction limits.**	<u>Rule for 2006</u>.−No provision. <u>Years after 2006</u>.−An employer generally may deduct the greater of (1) the excess (if any) of the sum of (a) 150% of the plan's funding target and (b) the plan's target normal cost, over the value of plan assets, and (2) the excess (if any) of the sum of (a) the plan's at-risk funding target and (b) the plan's at-risk target normal cost (regardless of whether the plan is in at-risk status), over the value of plan assets. <u>Effective date</u>.−Contributions for taxable years beginning after December 31, 2006.	<u>Rule for 2006</u>.−Same as present law, except in no case is the limit less than the excess of 180% of the plan's current liability over the value of plan assets. <u>Years after 2006</u>.−An employer generally may deduct the greater of: (1) the excess (if any) of the sum of (a) the plan's funding target, (b) the plan's target normal cost, and (c) a cushion amount, over the value of plan assets; and (2) the required contribution under the funding rules. The amount in (1) is not less than the excess (if any) of the sum of (a) the plan's at-risk funding target and (b) the plan's at-risk target normal cost (regardless of whether the plan is in at-risk status), over the value of plan assets. The cushion amount is the sum of (1) 80% of the plan's funding target, and (2) the amount by which the funding target would increase if certain expected compensation, benefit, and limit increases were taken into account. <u>Effective date</u>.−Contributions for taxable years beginning after December 31, 2005.

Provision	Present Law	House Bill	Senate Amendment
B. Deduction Limits for Contributions to Multiemployer Defined Benefit Plans (sec. 801 of the House bill and secs. 122 and 221 of the Senate amendment)	An employer generally may deduct the greater of (1) the required contribution under the funding rules, and (2) the sum of the plan's normal cost and the amount needed to amortize certain unfunded liabilities over 10 years, but not more than the full funding limitation. In no case is the limit less than the amount of the plan's unfunded current liability (i.e., the excess of the plan's current liability over the value of plan assets).	Same as present law, except in no case is the limit less than the excess of 140% of the plan's current liability over the value of plan assets. Effective date.−Contributions for taxable years beginning after December 31, 2006.	Same as House bill, except, for contributions for taxable years beginning in 2006, **an increased limit applies of** not less than the excess of 130% of the plan's current liability over the value of plan assets. Effective date.−Contributions for taxable years beginning after December 31, 2005.
C. Overall Limit on Contributions to Defined Benefit and Defined Contribution Plans (secs. 801-802 of the House bill and secs. 114, 123 and 221 of the Senate amendment)	If an employer maintains a defined benefit plan and a defined contribution plan covering the same participants, an overall limit applies to the contributions to all such plans. Under the overall limit, the employer generally may deduct the greater of (1) 25% of compensation, or (2) required contributions to the defined benefit plans under the funding rules (but not less than the amount of the plan's unfunded current liability).	Contributions to single-employer plans.−The overall limit is not less than the deduction limit for contributions to single-employer defined benefit plans, as modified by the bill. Contributions to multiemployer plans.−The overall limit is not less than the excess of 140% of a multiemployer defined benefit plan's current liability over the value of the plan's assets.	Contributions to single-employer plans.−The overall limit is not less than a single-employer defined benefit plan's funding shortfall, and single-employer defined benefit plans insured by the PBGC are not taken into account in applying the overall limit. Contributions to multiemployer plans.−Multiemployer plans are not taken into account in applying the overall limit.

Provision	Present Law	House Bill	Senate Amendment
		Contributions to defined contribution plans.−The overall limit applies to contributions to a defined contribution plan only to the extent they exceed 6% of compensation. Effective date.−Taxable years beginning after December 31, 2006.	Contributions to defined contribution plans.−Same as House bill. Effective date.−Generally contributions for taxable years beginning after December 31, 2005, except the provision relating to the overall limit for contributions to single-employer plans is effective for contributions for taxable years beginning after December 31, 2006.

Provision	Present Law	House Bill	Senate Amendment
IX. ENHANCED RETIREMENT SAVINGS AND DEFINED CONTRIBUTION PLANS **A. Pension and IRA Provisions of EGTRRA made Permanent (sec. 901 of the House bill)**	The Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") made a number of changes related to pensions and IRAs. In order to comply with reconciliation procedures under the Congressional Budget Act, EGTRRA's provisions do not apply to plan, limitation, or taxable years beginning after December 31, 2010. After such date, the Code and ERISA are to be applied as if EGTRRA had not been exacted.	The pension and IRA provisions of EGTRRA are made permanent. <u>Effective date</u>.–Date of enactment.	No provision.
B. Saver's Credit Made Permanent (sec. 902 of the House bill)	A nonrefundable credit is provided for up to $2,000 of qualified retirement savings contributions. The credit rate is 50%, 20%, or 10%, depending on the adjusted gross income of the taxpayer. Taxpayers with adjusted gross income of more than $50,000 for joint returns, $37,500 for heads of households, and $25,000 for single returns are not eligible for the credit. The credit expires after 2006.	The Saver's credit is made permanent. A taxpayer may elect that the amount of any refund due as a result of the credit be paid directly to an IRA. <u>Effective date.</u>–Contributions for taxable years beginning after 2006.	No provision.

Provision	Present Law	House Bill	Senate Amendment
C. Increasing Participation Through Automatic Enrollment (sec. 903 of the House bill and secs. 1108-1109 of the Senate amendment) **1. In general**	Under a 401(k) plan, participants are given the choice between having a contribution made to the plan (an "elective contribution") or receiving the amount in cash. A plan may provide that the participant receives cash unless an affirmative election is made or that elective contributions are made at a specified rate unless the participant elects otherwise. Plans that operate in the latter way are sometimes referred to as "automatic enrollment" or "negative election" plans. Such plans are subject to the same rules as other 401(k) plans.	An automatic contribution arrangement that meets certain requirements is treated as meeting the nondiscrimination rules for 401(k) plans and matching contributions and as meeting the top-heavy rules.	Same as House bill.
2. Amount of elective contributions	Subject to a statutory dollar limit on maximum permitted elective contributions, the amount of such contributions that may be made to a plan is a matter of plan design.	The automatic enrollment arrangement must provide for automatic elective contributions of not more than 10% of compensation and at least 3% in the first year the employee participates, 4% in the second year, 5% in the third year, and 6% in each year thereafter. (The dollar limit on elective contributions applies as under present law.)	The automatic enrollment arrangement must provide for elective contributions of at least 3% of compensation. The amount of elective contributions subject to the arrangement are to increase by 1 percentage point each year an employee participates (or such higher **percentage** as specified in the plan), **up to 10% (or such higher uniform percentage determined under the arrangement)**. Alternatively, the increases in elective contributions may take place after the employee receives an increase in compensation (rather than automatically annually). **(The dollar limit on elective contributions applies as under present law.)**

Provision	Present Law	House Bill	Senate Amendment
		Employees who were already participating in the plan do not have to be covered under automatic enrollment.	Employees who were already participating in the plan with a contribution rate **less than** the percentage that would apply to them under the automatic enrollment arrangement do not have to be covered under the automatic enrollment arrangement until one year after the arrangement is in effect (or such earlier date as the employee may elect).
3. Nondiscrimination requirements	Elective contributions are subject to a special nondiscrimination test that compares the average deferral percentage ("ADP") of the nonhighly compensated employees to that of the highly compensated employees. Under a safe harbor, a plan is deemed to satisfy the ADP test if nonhighly compensated employees receive (1) matching contributions of 100% up to elective contributions up to 3% of compensation and of 50% for elective deferrals of greater than 3% and up to 5% of compensation, or (2) nonelective contributions of at least 3% of compensation. Matching contributions are subject to a special nondiscrimination test similar to the ADP test. Matching contributions that satisfy the safe harbor (and meet certain other requirements) are deemed to satisfy the applicable nondiscrimination test.	<u>Matching or nonelective contributions</u>.−With respect to nonhighly compensated employees, the plan must provide for matching contributions equal to 50 percent of elective contributions up to 6% of compensation or a nonelective contribution equal to at least 2% of compensation. Such contributions are deemed to satisfy the ADP test and comparable rule for matching contributions. <u>Participation requirement</u>.−Elective contributions must be made for at least 70% of eligible nonhighly compensated employees (employees who were participating before the automatic feature was adopted may be disregarded).	<u>Matching or nonelective contributions</u>.−Same as the House bill, except that matching contributions must be made with respect to elective contributions up to 7% of compensation and the rate for nonelective contributions is 3% of compensation. <u>Participation requirement</u>.−No provision.

Provision	Present Law	House Bill	Senate Amendment
4. Vesting and distribution requirements for matching and nonelective contributions	Matching or nonelective contributions used to satisfy the nondiscrimination tests for elective contributions must be 100% vested and are subject to the withdrawal restrictions applicable to elective contributions. That is, such amounts generally cannot be distributed prior to termination of employment, hardship, age 59-1/5, death or disability.	Matching or nonelective contributions under the arrangement must vest at least as rapidly as under 2-year cliff vesting. Matching or nonelective contributions are subject to the withdrawal restrictions applicable to elective contributions.	Same as the House bill.
5. Erroneous automatic elective contributions	Present law provides special rules for distributions of elective contributions that exceed the amount permitted under the nondiscrimination rules or the dollar limit on such contributions.	Erroneous automatic elective contributions not in excess of $500 that are distributed before April 15 of the year following the year the contribution was made are treated as payments of compensation to the employee, are not subject to the 10-percent early withdrawal tax and are not subject to the otherwise applicable nondiscrimination rules. An erroneous automatic elective contribution is a contribution that is made within the first 3 months that an automatic election applied to an employee and that are designated by the employee as erroneous contributions.	Similar to the House bill, except that the election to distribute erroneous contributions must be made by the employee within the first 60 days the automatic enrollment option is effective and the amount that may be distributed is not limited to $500. Distributions of such contributions must include any earnings thereon.

Provision	Present Law	House Bill	Senate Amendment
6. Fiduciary rules applicable to default investments of individual account plans	ERISA imposes standards on the conduct of plan fiduciaries, including persons who make investment decisions with respect to plan assets. Fiduciaries are personally liable for any losses **to the plan** due to a violation of fiduciary standards. **In addition, a participant may bring an action for equitable relief to redress a violation of fiduciary standards.** An individual account plan may permit participants to make investment decisions with respect to their accounts. ERISA fiduciary liability does not apply to investment decisions made by plan participants if participants **exercise control over** the investment of their individual accounts, **as determined under ERISA regulations**. **In that case**, a plan fiduciary may be responsible for the investment alternatives made available, but not for the specific investment decisions made by participants.	A participant is treated as exercising control with respect to assets in an individual account plan **if such amounts are invested in a default arrangement in accordance with Department of Labor regulations** until the participant makes an affirmative election regarding investments. In order for this treatment to apply, notice of the participant's rights and obligations under the arrangement must be provided.	Same as House bill, except that the Labor Secretary is directed to issue regulations regarding appropriate default investments no later than 6 months after the date of enactment.

Provision	Present Law	House Bill	Senate Amendment
7. Preemption of State law	ERISA generally preempts all State laws relating to employee benefit plans, other than generally applicable criminal laws and laws relating to insurance, banking, or securities.	Preempts any State law that would directly or indirectly prohibit or restrict the inclusion in a plan of an automatic contribution arrangement. The Labor Secretary is authorized to establish minimum standards for such arrangements in order for preemption to apply. An automatic contribution arrangement is an arrangement: (1) under which an individual is treated as having contributed a stated percentage of compensation to a plan until the participant makes a contrary election, (2) with respect to which notice requirements are satisfied, and (3) under which contributions are invested in accordance with regulations issued by the Labor Secretary (including regulations relating to default investments).	Same as the House bill, except that there is no authorization for the Labor Secretary to establish minimum standards for automatic contribution arrangements.
8. Effective date		Plan years beginning after 2005.	Same as House bill.

Provision	Present Law	House Bill	Senate Amendment
D. Penalty-Free Withdrawals for Individuals Called to Active Duty for at least 179 Days (sec. 904 of the House bill)	A taxable distribution from a qualified retirement plan is subject to an additional 10-percent early withdrawal tax unless the distribution is made after 59-½, death, or disability or unless another exception to the tax applies. Certain qualified retirement plans, such as 401(k) plans, cannot make in-service distributions prior to attainment of age 59-½.	Plans are allowed to make and the 10-percent early withdrawal tax does not apply to "qualified reservist distributions." A qualified reservist distribution is made (1) from an IRA or elective deferrals from a 401(k) plan or similar arrangement, (2) to a member of the reserves who, after September 11, 2001, and before September 12, 2007, is called to active duty for a period in excess of 179 days or an indefinite period, and (3) during the period beginning on the date the individual was called to active duty and ending at the close of the active duty. The amount of a qualified reservist distribution may be recontributed to an IRA within 2 years after the end of the active duty period. No deduction is allowed for such contributions. Effective date.−Distributions after September 11, 2001.	No provision.

Provision	Present Law	House Bill	Senate Amendment
E. Waiver of 10-Percent Early Withdrawal Tax on Certain Distributions for Public Safety Employees (sec. 905 of the House bill and sec. 1004 of the Senate amendment)	A taxable distribution from a qualified retirement plan is subject to an additional 10-percent early withdrawal tax unless the distribution is made after 59-½, death, or disability or unless another exception to the tax applies. Under one exception, the early withdrawal tax does not apply to distributions made to an individual who separates from service after age 55.	The 10-percent early withdrawal tax does not apply to distributions to a public safety employee from a governmental plan to the extent attributable to a "DROP" benefit. A DROP benefit is a feature of a governmental defined benefit plan under which an employee elects to receive credits to an account in the plan which are not in excess of the benefits that would have been provided if the employee had retired under the plan at a specified earlier retirement date and which are in lieu of increases in the employee's accrued pension benefit under such plan based on years of service after the effective date of the DROP election. A public safety employee is any employee of a police or fire department of a State who provides police, fire fighting, or emergency medical services. Effective date.−Distributions after the date of enactment.	The 10-percent early withdrawal tax does not apply to a distribution from a governmental defined benefit plan made to a public safety employee who separates from service after age 50. A public safety employee is any employee of a State who provides police, fire fighting, or emergency medical services. Effective date.−Same as House bill.

Provision	Present Law	House Bill	Senate Amendment
F. Combat Zone Compensation Taken Into Account for Purposes of IRA Contributions (sec. 906 of the House bill)	In general, the maximum contribution that may be made to an IRA is limited to the lesser of a dollar amount ($4,000 for 2006) and the taxpayer's compensation for the year that is includible in gross income. Combat zone pay generally is not includible in gross income and thus is not taken into account for purposes of determining the maximum IRA contribution.	Combat pay is treated as includible compensation for purposes of determining the maximum contribution to an IRA. Effective date.−Taxable years beginning after 2005.	No provision.
G. Direct Payment of Tax Refunds to IRAs (sec. 907 of the House bill)	A taxpayer may direct that his or her refund be directly deposited into a checking or savings account rather than have the refund paid to the taxpayer by check.	The Treasury Secretary is directed to allow individuals to direct that a refund be deposited in an IRA of the individual. The rules relating to limits on and deductibility of IRA contributions are not modified. Effective date.−Taxable years beginning after 2006.	No provision.
H. IRA Eligibility for the Disabled (sec. 908 of the House bill)	In general, the maximum contribution that may be made to an IRA is limited to the lesser of a dollar amount ($4,000 for 2006) and the taxpayer's compensation for the year that is includible in gross income.	The rule limiting the maximum IRA contribution to a taxpayer's includible compensation does not apply to an individual who is disabled and who has not attained age 70-½. Effective date.−Taxable years beginning after 2005.	No provision.

Provision	Present Law	House Bill	Senate Amendment
I. Allow Rollovers by Nonspouse Beneficiaries of Certain Retirement Plan Distributions (sec. 909 of the House bill and sec. 1005 of the Senate amendment)	The spouse of a deceased employee may roll his or her interest in a qualified retirement plan, governmental section 457 plan, or tax-sheltered annuity to an IRA; however, such rollovers are not available to nonspouse beneficiaries. Benefits payable from a retirement plan or IRA after an employee's death are subject to certain minimum distribution rules.	Allows a nonspouse beneficiary of a qualified retirement plan, governmental section 457 plan, or tax-sheltered annuity to roll his or her interest over to an IRA, which is subject to the minimum distribution rules applicable to benefits payable after an employee's death. Effective date.−Distributions made after December 31, 2005	Same as House bill. Effective date.−Same as House bill.

Provision	Present Law	House Bill	Senate Amendment
X. PROVISIONS TO ENHANCE HEALTH CARE AFFORDABILITY			
A. Treatment of Annuity or Life Insurance Contracts with a Long-Term Care Insurance Feature (sec. 1001 of the House bill)	In general.–Amounts received under a qualified long-term care contract generally are excludable from income. In the case of long-term care insurance coverage provided by a rider on or as part of a life insurance contract, the requirements applicable to long-term care insurance contracts apply as if the portion of the contract providing such coverage were a separate contract. Charges against the contract.–Charges against the cash value of a life insurance or annuity contract are treated as distributions that may be subject to tax. No medical expense deduction generally is allowed for charges against the life insurance contract's cash surrender value for long-term care insurance provided by a rider on or as part of the contract.	In general.–The provision provides for tax rules applicable to long-term care insurance that is provided by a rider on or as part of an annuity contract, and modifies the tax rules applicable to long-term care insurance coverage provided by a rider on or as part of a life insurance contract. Charges against the contract.–Charges against the cash value of an annuity contract or the cash surrender value of a life insurance contract for qualified long-term care insurance coverage that is part of or a rider on the annuity or life insurance contract are not includible in the holder's income. The investment in the contract is reduced by any such charges. The portion of the contract providing long-term care insurance coverage is treated as a separate contract. No medical expense deduction is allowed for such charges.	No provision.

Provision	Present Law	House Bill	Senate Amendment
	Guideline premium limitation.–For life insurance contracts with long-term care riders, the guideline premium limitation applicable under section 7702(c)(2) is increased by the sum of charges (but not premium payments) against the life insurance contract's cash surrender value, the imposition of which reduces premiums paid for the contract. Qualified additional benefits.–For Federal income tax purposes the definition of a life insurance contract provides that a qualified additional benefit under a life insurance contract means only (1) guaranteed insurability, (2) accidental death or disability benefit, (3) family term coverage, (4) disability waiver benefit, or (5) a benefit prescribed in regulations. Tax-free exchanges.–Present law provides for the exchange of certain insurance contracts without recognition of gain or loss.	Guideline premium limitation.–For life insurance and annuity contracts with long-term care riders, the guideline premium limitation is increased by charges against the contract's cash surrender value for coverage under the qualified long-term care insurance contract (reduced by charges that reduce the premiums paid for the life insurance contract). Qualified additional benefits.–The provision increases the amount of pre-funding permitted by treating qualified long-term care insurance coverage under the rider as a qualified additional benefit, for purposes of the present-law definition of a life insurance contract. Tax-free exchanges.–Expanding the rules for tax-free exchanges of certain insurance contracts, the provision provides that no gain or loss is recognized on the exchange of a life insurance contract, an endowment contract, an annuity contract, or a qualified long-term care insurance contract for a qualified long-term care insurance contract.	

Provision	Present Law	House Bill	Senate Amendment
	Capitalization of certain expenses.−In the case of an insurance company, specified policy acquisition expenses for any taxable year are required to be capitalized, and are amortized generally over a 120-month period. Specified policy expenses means a percentage of net premiums: 1.75 percent for annuity contracts, 2.05 percent for group life insurance contracts, and 7.7 percent for all other specified contracts.	Capitalization of certain expenses.−In the case of an annuity or life insurance contract that includes a qualified long-term care insurance contract as a part of or rider on the annuity or life insurance contract, the specified policy acquisition expenses that must be capitalized is determined using 7.7 percent of the net premiums for the taxable year on such contracts. Effective date.−The provision is generally effective for contracts issued before, on, or after December 31, 2006, but only with respect to periods beginning after that date. The provision expanding the rules for tax-free exchanges of certain insurance contracts applies with respect to exchanges occurring after December 31, 2006.	
B. Disposition of Unused Amounts in Health and Dependent Care FSAs (sec. 1002 of the House bill)	Flexible spending arrangements (“FSAs”) generally cannot provide deferred compensation. Thus, amounts remaining in a FSA as of the end of the year generally must be forfeited by the employee.	Up to $500 of unused benefits in a health care FSA may be either carried forward to the next year or contributed by the employer to a health savings account (“HSA”) for the employee (to the extent permitted under the HSA rules). Up to $500 of unused benefits in a dependent care FSA may be carried forward to the next year.	No provision.

Provision	Present Law	House Bill	Senate Amendment
		Effective date.−Taxable years beginning after 2005.	
C. Distributions from Government Retirement Plans for Health and Long-Term Care Insurance for Public Safety Officers (sec. 1003 of the House bill)	Distributions from a qualified retirement plan are includible in gross income except to the extent they are a return of the individual's after-tax contributions.	Distributions from a governmental plan to a pay for health or qualified long-term care insurance premiums of a retired public safety officer are excludable from gross income, up to a maximum of $5,000 per year. The premium must be paid directly to the insurer. Public safety officers include individuals serving a public agency as a law enforcement officer, firefighter, chaplain, or member of a rescue squad or ambulance crew. Effective date.−Distributions in taxable years beginning after 2005.	No provision.

Provision	Present Law	House Bill	Senate Amendment
XI. GENERAL PROVISIONS: PROVISIONS RELATING TO PLAN AMENDMENTS (SEC. 1101 OF THE HOUSE BILL AND SEC. 1301 OF THE SENATE AMENDMENT)	In certain circumstances, a plan may be amended retroactively to comply with the plan qualification requirements. Plan amendments to reflect changes in the law generally must be made by the time prescribed by law for filing the income tax return of the employer for the employer's taxable year in which the change in law is effective. Plan amendments generally may not reduce accrued benefits or eliminate an optional form of benefit unless an exception applies (referred to as "anticutback relief").	Subject to certain requirements: (1) allows plan amendments made pursuant to the provisions of the bill to be made by the end of the 2008 plan year (2010 for governmental plans); and (2) provides anticutback relief for such amendments, except as provided by the Secretary of Treasury. Effective date.–Date of enactment.	Same as House bill, except (1) also applies to plan amendments made pursuant to the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, and (2) allows plan amendments to be made by the end of the 2007 plan year or such later date as prescribed by the Secretary of Treasury (and two years later for governmental plans). Effective date.–Same as House bill.

Provision	Present Law	House Bill	Senate Amendment
XII. DIVERSIFICATION RIGHTS AND OTHER PARTICIPANT PROTECTIONS UNDER DEFINED CONTRIBUTION PLANS			
A. Defined Contribution Plans Required to Provide Employees with Freedom to Invest Their Plan Assets (sec. 701 of the Senate amendment)	In general, the terms of a defined contribution plan are permitted to require plan assets to be invested in employer securities or real property. An employee stock ownership plan ("ESOP") is a type of defined contribution plan designed to invest primarily in employer stock; however, a participant who has attained age 55 and has at least 10 years of participation in an ESOP must be permitted to diversify the investment of his or her account in assets other than employer securities. Defined contribution plans often allow participants to direct the investment of their accounts.	No provision.	Requires a defined contribution plan holding publicly traded employer securities (or treated as holding such securities) to permit participants to diversify amounts invested in employer securities or real property. Does not apply to (1) an ESOP containing no elective deferrals, employee contributions or matching contributions and not forming part of another plan, or (2) a one-participant retirement plan (i.e., plans covering only business owners and their spouses). Requires immediate diversification rights for amounts attributable to elective deferrals and employee contributions, and diversification rights after three years of service for amounts attributable to employer nonelective and matching contributions. <u>Effective date</u>.−Generally applies for plan years beginning after December 31, 2005, with a two-year phase-in rule (except for certain participants) and a delayed effective date for

Provision	Present Law	House Bill	Senate Amendment
			collectively bargained plans and ESOPs holding certain preferred stock on September 17, 2003.
B. Notice of Freedom to Divest Employer Securities or Real Property (secs. 702 and 805 of the Senate amendment)	Under ERISA, plan participants must be provided with various notices and information about plans in which they participate. In order for a participant in a defined contribution plan to exercise control over the assets in his or her account, the participant must be given an explanation of the investment options under the plan and of the circumstances under which investment instructions may be given.	No provision.	A plan administrator must provide a participant with notice and certain other information no later than 30 days before the participant has the right to diversify amounts invested in employer securities or real property. Violations are subject to an ERISA penalty of up to $100 a day. Effective date.−Generally plan years beginning after December 31, 2005.
C. Periodic Pension Benefit Statements (sec. 703 of the Senate amendment)	ERISA requires a plan administrator to provide a benefit statement to a participant on request, but not more than once during any 12-month period. Violation may result in liability to participant of up to $100 a day.	No provision.	Requires the plan administrator of a defined contribution plan to provide (1) quarterly benefit statements to participants with the right to direct the investment of their accounts, and (2) annual benefit statements to other participants. Requires plan administrator of a defined benefit plan to provide vested active participants with benefit statements every 3 years (or to notify such participants annually that benefit statements are available). Does not apply to one-participant plans. (Present-law penalty applies to violations.)

Provision	Present Law	House Bill	Senate Amendment
			Effective date.−Generally plan years beginning after December 31, 2006, with a delayed effective date for collectively bargained plans.
D. Notice to Participants or Beneficiaries of Blackout Periods (sec. 704 of the Senate amendment)	ERISA requires the plan administrator of a defined contribution plan to provide participants with advance notice of a blackout period (generally a period during which participants' ability to change investments, or to obtain loans or distributions, is suspended for more than three consecutive business days). Blackout notices are not required with respect to one-participant plans.	No provision.	Makes technical changes to the definition of one-participant retirement plan. Effective date.−As if included in the related provision of the Sarbanes-Oxley Act of 2002.
E. Allowance of, and Credit for, Additional IRA Payments in Certain Bankruptcy Cases (sec. 705 of the Senate amendment)	Individuals generally may make IRA contributions up to the lesser of (1) the individual's compensation, or (2) a certain dollar amount ($4,000 for 2006). Individuals age 50 or older may make additional "catch-up" contributions up to a certain dollar amount ($1,000 for 2006). After 2010, only contributions of up to $2000 may be made to an IRA (or an individual's compensation, if less). For years before 2007, certain individuals may receive a tax credit (referred to as the "saver's credit") for	No provision.	Allows eligible individuals to make additional IRA contributions of up to $1,500 for 2005, and $3,000 in 2006-2009. Applies instead of regular catch-up contributions. Also provides a modified saver's credit of 50 percent of the additional contributions for 2005-2007. Applies if (1) an individual participated in a section 401(k) plan providing matching contributions at a certain rate in the form of employer stock six months before the employer's entry into bankruptcy proceedings, and (2) the employer (or any other person) is

Provision	Present Law	House Bill	Senate Amendment
	retirement plan contributions, including IRA contributions.		subject to indictment or conviction resulting from business transactions related to the bankruptcy. Effective date.−Taxable years beginning after December 31, 2004.
F. Increase in Maximum Bond Amount (sec. 707 of the Senate amendment)	ERISA generally requires a plan fiduciary and any person handling plan assets to be bonded, generally in an amount between $1,000 and $500,000.	No provision.	Raises the maximum amount of fiduciary bond required under ERISA to $1 million in the case of a plan that holds employer securities. Effective date.−Plan years beginning after December 31, 2005.

Provision	Present Law	House Bill	Senate Amendment
XIII. INFORMATION TO ASSIST PENSION PLAN PARTICIPANTS **A. Defined Contribution Plans to Provide Adequate Investment Education to Participants (sec. 801 of the Senate amendment)**	 Under ERISA, plan participants must be provided with various notices and information about plans in which they participate.	 No provision.	 The plan administrator of a defined contribution plan (other than a one-participant plan) must provide participants who have the right to direct investments with a model form relating to basic investment guidelines. The form is to be developed by the Secretary of Labor in consultation with the Secretary of Treasury. The form must be provided to participants at least annually. Violations are subject to an ERISA penalty of up to $100 a day. Effective date.−Plan years beginning after December 31, 2006, with a delayed effective date for collectively bargained plans.
B. Treatment of Qualified Retirement Planning Services (sec. 803 of the Senate amendment)	Qualified retirement planning services provided to employees by an employer maintaining a qualified employer plan are excluded from gross income.	No provision.	Allows employees to be offered a choice between cash compensation and qualified retirement planning services provided by an eligible investment adviser, up to an annual limit of $1,000. Effective date.−Taxable years beginning after December 31, 2005, and before January 1, 2011.

Provision	Present Law	House Bill	Senate Amendment
C. Increase in Penalties for Coercive Interference with Exercise of ERISA Rights (sec. 804 of the Senate amendment)	ERISA prohibits the use or attempt to use force or violence to restrain, coerce, or intimidate a plan participant in order to interfere with or prevent the exercise of rights under ERISA or the Welfare and Pension Plans Disclosure Act. Willful violation of this prohibition is a criminal offense subject to a $10,000 fine or imprisonment of up to one year, or both.	No provision.	Increases the penalties under ERISA for willful acts of coercive interference to a fine of $100,000 and a term of imprisonment of up to 10 years. Effective date.−Violations occurring on and after date of enactment.

Provision	Present Law	House Bill	Senate Amendment
XIV. PROVISIONS RELATING TO SPOUSAL PENSION PROTECTION			
A. Regulations on Time and Order of Issuance of Domestic Relations Orders (sec. 901 of the Senate amendment)	Rights to benefits under a pension plan may be provided to an alternate payee, including a former spouse, only under a qualified domestic relations order ("QDRO"). Present law generally does not provide specific rules for the treatment of a domestic relations order that (1) is issued after another domestic relations order or a QDRO (including an order issued after a divorce decree), or (2) revises another domestic relations order or a QDRO.	No provision.	Directs the Secretary of Labor to issue regulations to clarify that a domestic relations order otherwise meeting the QDRO requirements does not fail to be a QDRO solely because of the time it is issued or because it is issued after or revises another domestic relations order or another QDRO. Regulations must be issued within one year after the date of enactment. <u>Effective date</u>.–Date of enactment.
B. Entitlement of Divorced Spouses to Railroad Retirement Annuities Independent of Actual Entitlement of Employee (sec. 902 of the Senate amendment)	A former spouse of a railroad employee who is otherwise eligible for Tier I or Tier II benefits under the Railroad Retirement System generally cannot receive benefits until the employee begins receiving benefits, regardless of whether a State divorce court has awarded benefits to the former spouse.	No provision.	Eliminates the requirement that a railroad employee actually receive railroad retirement benefits for a former spouse to receive Tier I or Tier II benefits awarded under a State divorce court decision. <u>Effective date</u>.–One year after the date of enactment.
C. Extension of Tier II Railroad Retirement Benefits to Surviving Former Spouses Pursuant to Divorce Agreements (sec. 903 of the Senate amendment)	A former spouse of a railroad employee may be eligible for survivor's benefits under Tier I, but loses eligibility for Tier II benefits upon death of the employee.	No provision.	Provides that a former spouse does not lose eligibility for Tier II benefits upon death of the employee. <u>Effective date</u>.–One year after the date of enactment.

Provision	Present Law	House Bill	Senate Amendment
D. Requirement for Additional Survivor Annuity Option (sec. 904 of Senate amendment)	Defined benefit pension plans and money purchase pension plans generally must provide benefits in the form of a qualified joint and survivor annuity ("QJSA"), i.e., an annuity for the life of the participant, with a survivor annuity for the life of the spouse in an amount not less than 50 percent (and not more than 100 percent) of the amount payable during the joint lives of the participant and spouse.	No provision.	Requires defined benefit pension plans and money purchase pension plans also to offer benefits in the form of an optional survivor annuity, i.e., an annuity for the life of the participant, with a survivor annuity for the life of the spouse of the applicable percentage of the amount payable during the joint lives of the participant and spouse. The applicable percentage is (1) 75% if the QJSA under the plan provides a survivor annuity of less than 75%, and (2) 50% if the QJSA provides a survivor annuity of more than 75%. Effective date.−Plan years beginning after December 31, 2005, with a delayed effective date for collectively bargained plans.

Provision	Present Law	House Bill	Senate Amendment
XV. IMPROVEMENTS IN PORTABILITY **A. Clarifications Regarding Purchase of Permissive Service Credit (sec. 1001 of the Senate amendment)**	State and local government defined benefit plans may provide "permissive service credit," i.e., credit for a period of service not otherwise credited under the plan which applies only if the employee makes contributions to fund the benefit attributable to the period of service. Permissive service credit of more than 5 years may not be provided unless based on actual service performed as an employee of a governmental entity, an association representing government employees, certain educational institutions, or in military service. Subject to certain requirements, tax-free transfers from a 403(b) annuity or a governmental 457 plan may be made to purchase permissive service credit.	No provision.	Allows permissive service credit in order to provide an increased benefit for a period of service already credited under the plan; allows up to 5 years of permissive service credit, regardless of the performance of actual services; allows permissive service credit based on employment with educational institutions outside the United States; allows tax-free transfers from a 403(b) annuity of a governmental 457 plan, regardless of whether the limits on permissive service credit are met or the transferor and transferee plan are maintained by the same employer. <u>Effective date</u>.−Effective as if included in the Taxpayer Relief Act of 1997 and the Economic Growth and Tax Relief Reconciliation Act.
B. Rollover of After-Tax Amounts (sec. 1002 of the Senate amendment)	After-tax contributions may be rolled over from a qualified plan to a qualified defined contribution plan if the rollover is a direct rollover and the recipient plan separately accounts for such contributions. After-tax contributions may be rolled over from a tax-sheltered annuity (a "403(b)	No provision.	After-tax contributions (including after-tax contributions to a tax-sheltered annuity) may be rolled over to any qualified retirement plan or tax-sheltered annuity if the direct rollover and separate accounting requirements are met.

Provision	Present Law	House Bill	Senate Amendment
	annuity") to another tax-sheltered annuity if the rollover is a direct rollover and the annuity to which the rollover is made separately accounts for such contributions.		Effective date.–Taxable years beginning after 2005.
C. Clarification of Minimum Distribution Rules for Governmental Plans (sec. 1003 of the Senate amendment)	Minimum distribution rules apply to tax-favored retirement arrangements, including governmental plans. In general, these rules require that minimum distributions must begin no later than April 1 following the later of (1) the calendar year in which the participants retires or (2) the calendar year in which the participant attains age 70-½. Separate minimum distribution requirements apply after the death of the participant. An excise tax is imposed on the failure to comply with the minimum distribution rules.	No provision.	The Treasury Secretary is directed to issue regulations under which governmental plans are treated as complying with the minimum distribution rules if such plans comply with a reasonable good faith interpretation of such rules. Such regulations are to apply for all years to which the minimum distribution rules apply. Effective date.–Date of enactment.
D. Faster Vesting of Employer Nonelective Contributions (sec. 1006 of the Senate amendment)	Employer contributions to a qualified plan must generally vest at least as rapidly as under one of two schedules: (1) 5-year cliff vesting, or (2) a graduated schedule that provides for 20% vesting after 3 years of service, increasing until the participant is 100% vested after 7 years of service.	No provision.	Provides that the vesting rules for matching contributions apply to all employer contributions to defined contribution plans. Effective date.–Contributions for plan years beginning after 2005, with a delay for collectively bargained plans.

Provision	Present Law	House Bill	Senate Amendment
	Employer matching contributions must vest at least as rapidly as under one of two schedules: (1) 3-year cliff vesting, or (2) a graduated schedule that provides for 20% vesting after 2 years of service, increasing until the participant is 100% vested after 6 years of service.		
E. Allow Direct Rollovers from Retirement Plans to Roth IRAs (sec. 1007 of the Senate amendment)	Distributions from qualified retirement plans, tax-sheltered annuities, and governmental 457 plans can be rolled over to a traditional IRA, which can then be converted to a Roth IRA (subject to eligibility for a Roth IRA conversion). However, distributions from such plans cannot be rolled over directly to a Roth IRA.	No provision.	Allows distributions from qualified retirement plans, tax-sheltered annuities, and governmental 457 plans to be rolled over to a Roth IRA and treated as a Roth IRA conversion (subject to eligibility for such a conversion). Effective date.−Distributions made after December 31, 2005.
F. Elimination of Higher Penalty on Certain Simple Plan Distributions and Simple Plan Portability (secs. 1008-1009 of the Senate amendment)	A distribution from a SIMPLE IRA during the first two years an employee participates in the SIMPLE IRA (1) is subject to a 25% early withdrawal tax (rather than 10%) if made before age 59-½, unless an exception applies, and (2) may be rolled over only to another SIMPLE IRA.	No provision.	Applies the same early withdrawal tax and rollover rules to SIMPLE IRA distributions made in the first two years of participation as apply to later distributions. Effective date.−Years beginning after December 31, 2005.

Provision	Present Law	House Bill	Senate Amendment
G. Eligibility for Participation in Retirement Plans (sec. 1010 of the Senate amendment)	Benefits under a nongovernmental section 457 plan are includible in gross income when paid or made available. Under Code section 457 as in effect before 1997, benefits under a 457 plan were not treated as made available merely because a participant who separated from service could elect a lump sum if (1) the total amount payable under the plan did not exceed $3,500, and (2) no additional amounts could be deferred under the plan. Under present law, an amount is not treated as made available if the plan allows distributions not to exceed $5,000, there have been no prior distributions, and no amount has been deferred for 2 years prior to distribution.	No provision.	An individual is not precluded from participating in an eligible deferred compensation plan merely because of having received a distribution permitted under Code section 457 as in effect before 1997. Effective date.−Date of enactment.
H. Transfers to the PBGC (sec. 1011 of the Senate amendment)	Plans may provide that accrued benefits not exceeding $5,000 may be distributed on termination of employment without a participant's consent. Such distributions that exceed $1,000 generally must be rolled over to an IRA unless the participant elects otherwise (referred to as an "automatic rollover"). If the plan administrator of a terminating single-employer defined benefit plan cannot locate a participant (a "missing participant"), the plan administrator	No provision.	Allows automatic rollover amounts **from ongoing defined benefit and defined contribution plans** to be transferred to the PBGC and held for the participant under procedures similar to those applicable under the missing participant program (regardless of whether the participant whose benefit is being rolled over is a missing participant).

Provision	Present Law	House Bill	Senate Amendment
	may transfer the benefit to the PBGC to hold until the PBGC locates the missing participant.		Effective date.−Distributions made after issuance of final PBGC regulations implementing the provision. PBGC is directed to issue such regulations not later than December 31, 2006.
I. Missing Participants (sec. 1012 of the Senate amendment)	If the plan administrator of a terminating single-employer defined benefit plan cannot locate a participant (a "missing participant"), the plan administrator may transfer the benefit to the PBGC to hold until the PBGC locates the missing participant. The PBGC missing participant program does not apply to multiemployer plans or other plans (such as defined contribution plans) not covered by the PBGC insurance program.	No provision.	Extends the PBGC missing participant to **terminating** multiemployer plans and **terminating** plans not covered by the PBGC insurance program **(such as defined contribution plans and small plans of professional service employers)**. Effective date.−Distributions made after issuance of final PBGC regulations implementing the provision.
J. Modifications of Rules Governing Hardships and Unforeseen Financial Emergencies (sec. 1013 of the Senate amendment)	Distributions from section 401(k) plans, tax-sheltered annuities, and section 457 plans may be made in the case of a financial hardship or unforeseeable emergency. Under regulations, a financial hardship or unforeseeable emergency includes a financial hardship or unforeseeable emergency of a participant's spouse or dependent.	No provision.	Directs the Secretary of Treasury to revise the rules for determining financial hardship or unforeseeable emergency to include a financial hardship or unforeseeable emergency of a person who is the participant's beneficiary under the plan. Revised regulations must be issued within 180 days of the date of enactment. Effective date.−Date of enactment.

Provision	Present Law	House Bill	Senate Amendment
XVI. ADMINISTRATIVE PROVISIONS **A. Employee Plans Compliance Resolution System (sec. 1101 of the Senate amendment)**	The IRS has established the Employee Plans Compliance Resolution System ("EPCRS"), a corrections program for failures with respect to retirement plans and annuities to satisfy requirements for tax-favored status. EPCRS permits employers to correct compliance failures and continue to provide their employees with retirement benefits on a tax-favored basis. The IRS has expressed its intent that EPCRS will be updated and improved periodically in light of experience and comments from those who use it.	No provision.	Clarifies the IRS's authority with respect to EPCRS and provides issues to be considered in updating and improving EPCRS. <u>Effective date</u>.−Date of enactment.
B. Notice and Consent Period Regarding Distributions (sec. 1102 of the Senate amendment)	Notice and consent requirements apply to certain distributions from qualified retirement plans. These requirements relate to the content and timing of information that a plan must provide to a participant prior to a distribution.	No provision.	Expands the period in which certain distribution notices must be provided to employees and directs the Treasury Secretary to modify the notice and consent regulations to require certain information to be included in a distribution notice. <u>Effective date</u>.−Generally years beginning after December 31, 2005.

Provision	Present Law	House Bill	Senate Amendment
C. Reporting Simplification (sec. 1103 of the Senate amendment)	A plan administrator of a retirement plan must file an annual return with respect to a plan. A simplified annual return applies in the case of a one-participant plan (i.e., plans covering only business owners and their spouses). No annual return is required with respect to a one-participant plan if the plan does not have an accumulated funding deficiency and the total value of the plan assets does not exceed $100,000.	No provision.	Removes the annual return requirement for one-participant plans with assets of $250,000 or less. Directs the Secretaries of Treasury and Labor to provide a simplified annual return for certain plans with fewer than 25 participants. <u>Effective date</u>.−Plan years beginning on or after January 1, 2006, for one-participant plans. Plan years beginning after December 31, 2006, for plans with fewer than 25 participants.
D. Voluntary Early Retirement Incentive and Employment Retention Plans Maintained by Local Educational Agencies and Other Entities (sec. 1104 of the Senate amendment)	Under the Code, nonqualified deferred compensation of employees of State and local governments and tax-exempt organizations is generally includible in income at the time of vesting unless it is provided under an eligible deferred compensation plan. Under ERISA, different rules apply to welfare benefit plans and pension plans. The Age Discrimination in Employment Act ("ADEA"), which generally prohibits discrimination in employment because of age, contains special rules for the subsidized portion of an early retirement benefit under a defined benefit plan and voluntary early retirement incentive plans.	No provision.	Excepts certain voluntary early retirement incentive plans and employment retention plans maintained by public school districts and certain education associations from the Code rules applicable to nonqualified deferred compensation plans; treats such plans as welfare benefit plans under ERISA; and treats benefits under such a voluntary early retirement incentive plan as if paid under a defined benefit plan for purposes of ADEA. <u>Effective date</u>.−Generally the date of enactment or years ending after date of enactment.

Provision	Present Law	House Bill	Senate Amendment
E. No Reduction in Unemployment Compensation as a Result of Pension Rollovers (sec. 1105 of the Senate amendment)	State unemployment compensation is generally reduced if an individual receives retirement benefits. Some States currently apply this reduction if an individual receives a retirement plan distribution that is rolled over tax-free to another plan (a “rollover” distribution).	No provision.	Amends the Code so that the reduction in unemployment compensation for retirement benefits does not apply if an individual receives a rollover distribution. Effective date.−Weeks beginning on or after date of enactment.
F. Withholding on Distributions from Governmental Section 457 Plans (sec. 1106 of the Senate amendment)	The Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”) conformed the rollover and withholding rules for governmental section 457 plans to the rules for qualified retirement plans. As a result, 20-percent withholding applies to certain distributions from a governmental section 457 plan, including installment distributions that began before 2002 when the EGTRRA changes became effective.	No provision.	Provides a transition rule under which prior-law withholding rules may apply to installment distributions that began before 2002 from a governmental section 457 plan. Effective date.−As if included in EGTRRA.
G. Treatment of Defined Benefit Plan as Governmental Plan (sec. 1107 of the Senate amendment)	Retirement plans maintained by governmental employers are exempt from ERISA and from Code provisions corresponding to ERISA provisions. Governmental plans are also eligible for various special rules under the Code.	No provision.	Provides that an eligible defined benefit plan is treated as a governmental plan under the Code and ERISA. An eligible defined benefit plan is a defined benefit plan maintained by a nonprofit organization that was (1) incorporated on September 16, 1998, under a State nonprofit corporation statute, and (2) organized for the express purpose of supporting the missions and goals of a

Provision	Present Law	House Bill	Senate Amendment
			public corporation that (a) was created by a State statute effective on July 1, 1995, (b) is a governmental entity under State law, and (c) is a member of the nonprofit corporation. <u>Effective date</u>.−Years beginning before, on, or after date of enactment.

Provision	Present Law	House Bill	Senate Amendment
XVII. UNITED STATES TAX COURT MODERNIZATION **A. Judges of the Tax Court (secs. 1200-1207 and 1213 of the Senate amendment)**	Tax Court judges: • may elect to be covered by a Tax Court survivor's annuity plan under which benefits are payable after 5 years of service and COLAs are based on pay increases for Tax Court judges; • are not eligible to participate in the Thrift Savings Plan; • may participate in the Federal Employees Group Life Insurance ("FEGLI") program after retirement; • are not covered by the leave system for Federal Executive Branch employees; and • are subject to limitations on outside earned income under the Ethics in Government Act of 1978.	No provision.	Provides that: • benefits are payable under the Tax Court survivor's annuity plan without regard to years of service if a judge is assassinated, and COLAs are generally based on cost of living increases under the Civil Service Retirement System; • judges may participate in the Thrift Savings Plan, but are not eligible for agency contributions; • the Tax Court may pay certain premium increases under the FEGLI program for judges age 65 or older; • a judge is entitled to a lump-sum payment from the Tax Court for the balance of his or her annual leave accrued as a Federal Executive Branch employee; and • compensation earned by a retired Tax Court judge for teaching is not treated as outside earned income for purposes of the Ethics in Government Act of 1978. Effective date.−Generally effective on date of enactment.

Provision	Present Law	House Bill	Senate Amendment
B. Special Trial Judges of the Tax Court (secs. 1208-1213 of the Senate amendment)	The chief judge of the Tax Court may appoint special trial judges to handle certain cases. Special trial judges: • serve for an indefinite term; • receive a salary of 90% of the salary of a Tax Court judge; and • are generally covered by the leave and benefit programs that apply to Federal Executive Branch employees.	No provision.	Renames the position of special trial judge as "magistrate judge of the Tax Court"and provides that magistrate judges: • are appointed (or reappointed) for 8-year terms, subject to removal in limited circumstances; • receive a salary of 92% of the salary of a Tax Court judge; • are exempt from the leave program that applies to Federal Executive Branch employees; • are covered by the Tax Court retirement and survivor's annuity programs; and • after retirement, may be recalled to perform services for limited periods. Effective date.−Generally effective on date of enactment.

Provision	Present Law	House Bill	Senate Amendment
XVIII. OTHER PROVISIONS **A. Authority of Secretary of Labor, Secretary of Treasury, and Pension Benefit Guaranty Corporation to Postpone Certain Deadlines (sec. 1302 of the Senate amendment)**	In connection with a Presidentially declared disaster, the Secretary of Treasury, Secretary of Labor and Executive Director of the PBGC have the authority to extend the periods in which certain actions relating to retirement plans must be taken. A plan does not fail to be operated in accordance with its terms as a result of operation in accordance with such an extension. This authority has been exercised with respect to certain periods in connection with the Presidentially declared disasters by reason of Hurricanes Katrina, Rita, and Wilma.	No provision.	Directs the Secretary of Treasury, Secretary of Labor and Executive Director of the PBGC to (1) exercise their authority to postpone deadlines in connection with the disasters declared by reason of Hurricanes Katrina, Rita, and Wilma, and (2) issue guidance for plan sponsors and participants as soon as practicable regarding extension of deadlines and rules applicable to these extraordinary circumstances. Nothing in the provision is to be construed to relieve any plan sponsor from the requirement to pay benefits or make contributions under a plan. Effective date.−Date of enactment.
B. Governmental Pension Plan Equalization **1. Definition of governmental plan (sec. 1311 of the Senate amendment)**	Governmental plans are exempt from ERISA and from Code requirements that correspond to ERISA requirements. A governmental plan is generally a plan established and maintained for its employees by (1) the Federal government, (2) the government of a State or political subdivision of a State, or (3) any agency or instrumentality of any of the foregoing.	No provision.	Provides governmental plan status for a plan established or maintained for its employees by an Indian tribal government, a subdivision of an Indian tribal government, an agency or instrumentality (or subdivision) of an Indian tribal government, or an entity established under Federal, State, or tribal law which is wholly owned or controlled by any of the foregoing.

Provision	Present Law	House Bill	Senate Amendment
2. Extension to all governmental plans of current moratorium on application of certain nondiscrimination rules applicable to State and local governmental plans (sec. 1312 of the Senate amendment)	Retirement plans maintained by State and local governments are exempt from various nondiscrimination requirements under the Code. Other governmental plans are subject to these requirements.	No provision.	Exempts all governmental plans from the nondiscrimination requirements.
3. Clarification that tribal governments are subject to same defined benefit plan rules and regulations applied to State and other local governments, their police and firefighters (sec. 1313 of the Senate amendment)	Benefits under a defined benefit plan generally cannot exceed the lesser of (1) 100 percent of average compensation, or (2) a dollar amount ($175,000 for 2006), subject to certain special rules for defined benefit plans maintained by State and local government employers and other special rules for employees of a police or fire department. Employee contributions to a defined benefit plan are generally subject to tax; however, employee contributions may be made to a State or local government defined benefit plan on a pretax basis (referred to as "pickup" contributions). Governmental defined benefit plans are not covered by the PBGC insurance program.	No provision.	Extends to defined benefit plans maintained by tribal governments: (1) the special benefit limit rules for State and local government plans and employees of a police or fire department, and (2) the pickup contribution rules. Excepts defined benefit plans maintained by tribal governments from coverage under the PBGC insurance program.
4. Effective date (sec. 1314 of the Senate amendment)			Any year beginning before, on, or after date of enactment.

Provision	Present Law	House Bill	Senate Amendment
C. Miscellaneous Provisions			
1. Transfer of excess funds from Black Lung disability trusts to United Mine Workers of America Combined Benefit Fund (sec. 1321 of the Senate amendment)	Assets in qualified black lung benefit trusts may be used to pay expenses relating to health benefits for retired coal miners and their spouses and dependents, subject to the lower of a yearly limit and an aggregate limit. The United Mine Workers of America ("UMWA") Combined Benefit Fund was established by the Coal Industry Retiree Health Benefit Act of 1992 to assume responsibility of payments for medical care expenses of certain retired miners and their dependents. The Combined Benefit Fund is financed in part by assessments on current and former signatories to labor agreements with the UMWA, including premiums for unassigned beneficiaries.	No provision.	Eliminates the aggregate limit on the amount of black lung benefit trust assets that may be used to pay expenses relating to health benefits for retired coal miners and their spouses and dependents. Directs the Secretary of the Treasury to transfer to the UMWA Combined Benefit Fund the additional amounts received in the Treasury by reason of the elimination of the aggregate limit and directs the transferred amounts to be used to reduce unassigned beneficiary premiums. Effective date.−Taxable years beginning after December 31, 2002.
2. Treatment of death benefits from company-owned life insurance ("COLI") (sec. 1322 of the Senate amendment)	Amounts received under a life insurance contract paid by reason of the death of the insured are not includible in gross income for Federal tax purposes. No Federal income tax generally is imposed on a policyholder with respect to the earnings under a life insurance contract (inside buildup).	No provision.	The bill excludes from income only proceeds on those employer-owned life insurance contracts that are purchased on the lives of directors and highly compensated individuals, including the highest-paid 35% of employees, or that cover an individual who was an employee within 12 months before death, provided the notice and consent requirements are met. Other proceeds are included in the recipient's income to the extent

Provision	Present Law	House Bill	Senate Amendment
	No deduction is permitted for premiums paid on any life insurance, annuity or endowment contract, if the taxpayer is directly or indirectly a beneficiary under the contract. No deduction generally is allowed for interest paid or accrued on any debt with respect to a life insurance, annuity or endowment contract owned by the taxpayer covering the life of any individual, with an exception for key persons. No deduction generally is allowed for the pro rata portion of interest expense of a taxpayer (other than a natural person) that is allocable to the unborrowed policy cash value of a life insurance, annuity or endowment contract, with an exception for contracts covering 20-percent owners, officers, directors or employees of the taxpayer's business. Federal tax law generally does not impose notice and consent or specific reporting requirements with respect to employer-owned life insurance.		they exceed premiums paid, unless (1) paid to a member of the insured's family (or trust for family members' benefit, or the insured's estate), or (2) used to purchase an equity (or partnership capital or profits) interest in the applicable policyholder from such a family member, beneficiary, trust or estate. The notice and consent requirements of the provision are met if, before the issuance of the contract, (1) the employee is notified in writing that the applicable policyholder intends to insure the employee's life, and is notified of the maximum face amount at issue of the life insurance contract that the employer might take out on the life of the employee, (2) the employee provides written consent to being insured under the contract and that such coverage may continue after the insured terminates employment, and (3) the employee is informed in writing that an applicable policyholder will be a beneficiary of any proceeds payable on the death of the employee. The bill requires annual reporting and recordkeeping by applicable policyholders that own one or more employer-owned life insurance contracts.

Provision	Present Law	House Bill	Senate Amendment
			Effective date.−Generally effective for contracts issued after the date of enactment, except for contracts issued after such date pursuant to an exchange described in section 1035 of the Code. In addition, certain material increases in the death benefit or other material changes will generally cause a contract to be treated as a new contract, with an exception for existing lives under a master contract.
D. Health and Medical Benefits **1. Ability to use excess pension assets for future retiree health benefits (sec. 1331 of the Senate amendment)**	Defined benefit plans may provide retiree medical benefits through separate accounts ("retiree medical accounts") under the plan. In the case of a single-employer plan, if the value of plan assets exceeds the greater of (1) accrued liability, or (2) 125 percent of current liability, and certain other requirements are met, qualified transfers of excess pension assets may be made to retiree medical accounts, but the amount transferred cannot exceed the expected cost of retiree medical benefits for the year of the transfer ("current year"). Retiree medical benefits must be maintained at a certain level for the current year and 4 subsequent years. Such	No provision.	Permits transfers (before January 1, 2014) of excess pension assets under a single-employer plan to retiree medical accounts to fund the expected cost of retiree medical benefits for the current and future years (the "transfer period," not to exceed a total of ten years), if the value of plan assets exceeds the greater of (1) accrued liability, or (2) 115 percent of current liability and the requirements for a qualified transfer are otherwise met. Requires (1) the plan's funded status to be maintained at the minimum level during the transfer period, and (2) retiree medical benefits to be maintained at a certain level for the

Provision	Present Law	House Bill	Senate Amendment
	transfers may not be made after December 31, 2013.		transfer period and four subsequent years. Effective date.−Transfers after date of enactment.
2. Addition of special rules for funding of collectively bargained retiree health benefits (sec. 1332 of the Senate amendment)	Transfer of pension assets.−Defined benefit plans may provide retiree medical benefits through separate accounts ("retiree medical accounts") under the plan. In the case of a single-employer plan, if the value of plan assets exceeds the greater of (1) accrued liability, or (2) 125 percent of current liability, and certain other requirements are met, qualified transfers of excess pension assets may be made to retiree medical accounts, but the amount transferred cannot exceed the expected cost of retiree medical benefits for the year of the transfer ("current year"). Retiree medical benefits must be maintained at a certain level for the current year and four subsequent years. Such transfers may not be made after December 31, 2013.	No provision.	Transfer of pension assets.−Permits transfers (before January 1, 2014) of excess pension assets under a single-employer plan to retiree medical accounts to fund the expected cost of retiree medical benefits provided in the current and future years under a collective bargaining agreement, if the requirements for a qualified transfer are otherwise met. Applies only if (1) for the employer's taxable year ending in 2005, medical benefits are provided to retirees (and spouses and dependents) under all the employer's benefit plans, and (2) the aggregate cost of benefits for such year is at least five percent of the employer's gross receipts. Requires retiree medical benefits to be **provided at the level determined under the collective bargaining agreement** for the shorter of (1) the remaining lifetime of each covered retiree (and any covered spouse and dependent), or (2) the period of coverage provided under the collectively bargained health plan for such covered retiree (and any covered spouse and dependent).

Provision	Present Law	House Bill	Senate Amendment
	Deductions for contributions.– Deductions for contributions to qualified retirement plans are subject to certain limits. Deductions for contributions to funded welfare benefit plans are generally also subject to limits, including limits on the amount that may be contributed to an account to fund the expected cost of retiree medical benefits for future years. The limit on the amount that may be contributed to an account to fund the expected cost of retiree medical benefits for future years does not apply to a separate fund established under a collective bargaining agreement.		Deductions for contributions.– Provides that (1) the limits on deductions for contributions to collectively bargained welfare benefit funds apply to contributions to retiree medical accounts providing retiree medical benefits under a collective bargaining agreement, and (2) the limits on deductions for contributions to qualified retirement plans do not apply to such contributions. Directs the Secretary of the Treasury to provide rules to prevent duplicate deductions for the same contributions or for duplicate contributions to fund the same benefits. Effective date.–Years beginning after December 31, 2004.
3. Allowance of reserve for medical benefits of plans sponsored by bona fide associations (sec. 1333 of the Senate amendment)	Deductions for contributions to funded welfare benefit plans are generally subject to limits, including limits on the amount that may be contributed to an account to fund medical benefits (other than retiree medical benefits) for future years, which is generally limited to the amount needed to fund claims for medical benefits incurred but unpaid as of the close of the current year.	No provision.	Allows deductions for contributions to fund a reserve for medical benefits (other than retiree medical benefits) for future years provided through a bona fide association as defined in section 2791(d)(3) of the Public Health Service Act. The reserve cannot exceed 35 percent of the sum of (1) medical benefit costs for the current year, plus (2) the change in claims incurred but unpaid for the current year.

Provision	Present Law	House Bill	Senate Amendment
	These limits do not apply to a welfare benefit fund that is part of a plan (referred to a "10-or-more employer" plan), to which (1) more than one employer contributes, and (2) no employer normally contributes more than 10 percent of the total contributions, provided that the plan may not maintain experience rating arrangements with respect to individual employers.		Effective date.−Taxable years ending after December 31, 2005.
E. Cash or Deferred Arrangements **1. Treatment of eligible combined defined benefit plans and qualified cash or deferred arrangements (sec. 1336 of the Senate amendment)**	In general.−The assets of a qualified retirement plan (either a defined contribution plan or a defined benefit plan) must be held in trust for the exclusive benefit of participants and beneficiaries. The requirements applicable to defined contribution plans and defined benefit plans differ in some respects. Qualified retirement plans are also subject to annual reporting requirements, which generally apply on a plan-by-plan basis.	No provision.	In general.−Provides special rules for an "eligible combined plan," defined as a plan (1) maintained by an employer employing at least two and not more than 50 employees during the preceding year, (2) consisting of a defined benefit plan and a section 401(k) plan, (3) the assets of which are held in a single trust with the assets of each plan clearly identified and allocated to the plan, and (4) meeting the benefit, contribution, vesting, and nondiscrimination requirements under the provision. The requirements otherwise applicable to a defined benefit plan or a section 401(k) plan forming part of an eligible combined plan continue to apply. A defined benefit plan or

Provision	Present Law	House Bill	Senate Amendment
	Nondiscrimination rules.−Contributions or benefits under a qualified retirement plan generally may not discriminate in favor of highly compensated employees. In some cases these nondiscrimination requirements may be met on a safe-harbor basis or by taking into account permitted disparity or contributions or benefits under another plan. Elective deferrals under a section 401(k) plan, employee contributions, and matching contributions are subject to special nondiscrimination tests that generally cannot be satisfied by taking into account other contributions or benefits, except as provided under certain safe harbors **(described above in Item IX.C.3)**. Under a section 401(k) plan, no benefits other than matching contributions can be contingent on whether an employee makes elective deferrals. Vesting rules.−In general, the right to employer-provided contributions or benefits under a qualified retirement plan must be fully vested after five years of service or must vest at a rate of not less than 20 percent a year after three through seven years of service.		section 401(k) plan under an eligible combined plan is treated as meeting the top-heavy requirements. An eligible combined plan is treated as a single plan for annual reporting purposes. Defined benefit plan rules.−A defined benefit plan under an eligible combined plan must provide each participant with a minimum accrued benefit of the greater of (1) 1% of final average pay times years of service, or (2) 20% of final average pay. An alternative benefit requirement applies if the defined benefit plan is a cash balance plan. Additional benefits may be provided if they satisfy the applicable nondiscrimination requirements without regard to **contributions or benefits under another plan or** permitted disparity and are provided uniformly to all participants. All benefits under the plan must be fully vested after 3 years of service. Section 401(k) plan requirements.−A section 401(k) plan under an eligible combined plan must provide for automatic elective deferrals of 4% of compensation and for fully vested matching contributions of 50% of elective deferrals up to 4% of

Provision	Present Law	House Bill	Senate Amendment
	Employer matching contributions must be fully vested after three years of service or must vest at a rate of not less than 20 percent a year after two through six years of service. Faster vesting schedules (and certain minimum required contributions or benefits) are required under a plan that is top-heavy. Elective deferrals and employee contributions must be fully vested when made.		compensation. The plan is deemed to satisfy the nondiscrimination requirements applicable to elective deferrals and matching contributions. Additional nonelective contributions may be provided if they satisfy the applicable nondiscrimination requirements without regard to **contributions or benefits under another plan or** permitted disparity, are provided uniformly to all participants, and are fully vested after three years of service. <u>Effective date</u>.−Plan years beginning after December 31, 2008.
2. State and local governments eligible to maintain section 401(k) plans (sec. 1337 of the Senate amendment)	State and local governments generally may not maintain a section 401(k) plan, except for certain plans adopted (or treated as adopted) before May 6, 1986 ("grandfathered" plans). Elective deferrals under a section 401(k) plan may not exceed a dollar amount ($15,000 for 2006). Amounts deferred under an eligible deferred compensation plan (a "section 457" plan) of a governmental employer are also subject to the same dollar limit. Before 2002, a single limit applied to elective deferrals under a section 401(k) plan and deferrals under a section 457 plan.	No provision.	Allows State and local government employers to establish section 401(k) plans. Except in the case of a grandfathered plan, the limit on elective deferrals is reduced by any amounts deferred under a governmental section 457 plan. <u>Effective date</u>.−Plan years beginning after December 31, 2005.

Provision	Present Law	House Bill	Senate Amendment
F. Excess Contributions (sec. 1339 of the Senate amendment)	An excise tax applies to elective deferrals and matching contributions for highly compensated employees in excess of the amount permitted under applicable nondiscrimination tests (referred to as "excess contributions"). The excise tax does not apply if the excess contributions (and income attributable thereto) are distributed or forfeited (to the extent forfeiture is permitted) within 2-1/2 months after the close of the plan year. Amounts distributed within that period are generally included in income for the year of the contribution.	No provision.	In the case if an eligible automatic contribution arrangement (as defined under another provision of the bill), excess contributions (and income attributable thereto) may be distributed or forfeited (to the extent forfeiture is permitted) within 6 months after the close of the plan year without application of an excise tax. Distributed amounts are included in income for the year distributed. Effective date.−Years beginning after December 31, 2005.
G. Other Provisions **1. Federal task force on older workers (sec. 1342 of the Senate amendment)**	No provision.	No provision.	Directs the Secretary of Labor to establish a Federal Task Force on Older Workers within 90 days of enactment. Effective date.−Date of enactment.
2. Technical correction to Saver Act (sec. 1343 of the Senate amendment)	The Savings Are Vital to Everyone's Retirement ("SAVER") Act initiated a public-private partnership to educate American workers about retirement savings and directed the Department of Labor to maintain an ongoing program of public information and outreach.	No provision.	Provides for the Chairman and Ranking Member of the Senate Committee on Finance, the House Committee on Ways and Means, and the Subcommittee on Employer-Employee Relations of the House Committee on Education and the Workforce to be delegates to future

Provision	Present Law	House Bill	Senate Amendment
	The Act also convened a National Summit on Retirement Savings held June 4-5, 1998. A National Summit was also held February 28-March 1, 2002 **and another is scheduled for March 1-2, 2006.**		National Summits on Retirement Savings; provides for National Summits to be held in 2006 and 2010; and makes various changes in the procedures applicable to National Summits. Effective date.–Date of enactment.